DOCKET

No. 07-208
Title: Indiana, Petitioner
v.
Ahmad Edwards
Docketed: August 17, 2007
Lower Ct: Supreme Court of Indiana
Case Nos.: (49S02-0705-CR-202)
Decision Date: May 17, 2007
Questions Presented

~~Date~~~	~~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~~
Aug 15 2007	Petition for a writ of certiorari filed. (Response due September 17, 2007)
Aug 23 2007	Waiver of right of respondent Ahmad Edwards to respond filed.
Sep 5 2007	DISTRIBUTED for Conference of September 24, 2007.
Sep 13 2007	Response Requested . (Due October 15, 2007)
Sep 13 2007	Brief amici curiae of Ohio, et al. filed. (Distributed)
Oct 10 2007	Order extending time to file response to petition to and including November 14, 2007.
Nov 6 2007	Brief of respondent Ahmad Edwards in opposition filed.
Nov 6 2007	Motion for leave to proceed in forma pauperis filed by respondent.
Nov 16 2007	Reply of petitioner Indiana filed.
Nov 20 2007	DISTRIBUTED for Conference of December 7, 2007.
Dec 7 2007	Motion for leave to proceed in forma pauperis filed by respondent GRANTED.
Dec 7 2007	Petition GRANTED limited to the following Question: "May States adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?"
Jan 10 2008	The time within which to file the joint appendix and petitioner's brief on the merits is extended to and including February 4, 2008.
Jan 10 2008	The time within which to file respondent's brief on the merits is extended to and including March 5, 2008.
Jan 11 2008	Consent to the filing of amicus briefs in support of either party, or neither party, received from counsel for the petitioner.
Jan 22 2008	SET FOR ARGUMENT ON Wednesday, March 26, 2008.
Jan 30 2008	Consent to the filing of amicus briefs in support of either party, or neither party, received from counsel of record for the respondent.
Feb 4 2008	Joint appendix filed. (Distributed).
Feb 4 2008	Brief of petitioner Indiana filed. (Distributed)
Feb 6 2008	CIRCULATED.
Feb 8 2008	Brief amicus curiae of National Association of Criminal Defense Lawyers filed. (Distributed)
Feb 11 2008	Brief amicus curiae of United States filed. (Distributed)
Feb 11 2008	Brief amici curiae of American Psychiatric Association, et al. in support of neither party filed. (Distributed)
Feb 11 2008	Brief amicus curiae of Criminal Justice Legal Foundation filed. (Distributed)
Feb 11 2008	Brief amicus curiae of American Bar Association filed. (Distributed)

Feb 11 2008	Brief amici curiae of Ohio, and 18 Other States filed. (Distributed)
Feb 15 2008	Record received from the Supreme Court of Indiana. (1 box)
Feb 20 2008	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
Mar 5 2008	Brief of respondent Ahmad Edwards filed. (Distributed)
Mar 14 2008	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
Mar 18 2008	Reply of petitioner Indiana filed. (Distributed)
Mar 26 2008	Argued. For petitioner: Thomas M. Fisher, Solicitor General, Indianapolis, Ind.; and Michael R. Dreeben, Deputy Solicitor General, Department of Justice, Washington, D.C. (for United States, as amicus curiae.) For respondent: Mark T. Stancil, Washington, D.C.

PETITION FOR WRIT OF CERTIORARI

Supreme Court, U.S.
FILED

07 - 208 AUG 15 2007

No. 07- OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

STATE OF INDIANA,
Petitioner,

v.

AHMAD EDWARDS,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Indiana

PETITION FOR WRIT OF CERTIORARI

Office of the Indiana
Attorney General
IGC South, Fifth Floor
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-6201

**Counsel of Record*

STEVE CARTER
Attorney General
THOMAS M. FISHER*
Solicitor General
JULIE A. HOFFMAN BRUBAKER
JUSTIN F. ROEBEL
Deputy Attorneys General

Counsel for Petitioner

QUESTION PRESENTED

May a criminal defendant who, despite being legally competent, is schizophrenic, delusional, and mentally decompensatory in the course of a simple conversation, be denied the right to represent himself at trial when the trial court reasonably concludes that permitting self-representation would deny the defendant a fair trial?

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PETITION FOR WRIT OF CERTIORARI

The State of Indiana respectfully petitions the Court for a writ of certiorari to the Supreme Court of the State of Indiana.

OPINIONS BELOW

The opinion of the Indiana Supreme Court is reported at *Edwards v. State*, 866 N.E.2d 252 (Ind. 2007). App. 1a-15a. The opinion of the Indiana Court of Appeals is reported at *Edwards v. State*, 854 N.E.2d 42 (Ind. Ct. App. 2006). App. 16a-31a. The trial court's decision holding that Respondent Ahmad Edwards was incompetent to represent himself at trial is unreported, but the relevant portion of the transcript is included in the Appendix. App. 32a-41a.

JURISDICTION

The Indiana Supreme Court entered judgment in this case on May 17, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

This is the unfortunate case of a mentally impaired young man who, caught shoplifting, shot an unarmed security guard and a bystander before being subdued by a passing FBI agent. He was twice declared incompetent to stand trial, but eventually regained the mental capacity to satisfy the standard of *Dusky v. United States*, 362 U.S. 402 (1960). At trial, he insisted on defending himself, but the trial judge quite reasonably said no. This case asks whether the right to self-representation recognized in *Faretta v. California*, 422 U.S. 806 (1975), extends to a defendant whose mental impairments render him wholly incapable of presenting a coherent and meaningful defense.

1. Defendant Ahmad Edwards is thirty-four-years old and suffers from grandiose delusions, schizophrenia, and depressive and expressive language disorders. (Edwards's Appeal App. [hereinafter, "Ed.App."] 145-46, 282-84, 287, 632). He was diagnosed with dyslexia as a child and his family has a long history of psychiatric illness, including a sister with schizophrenia. (Ed.App. 145-46). Additionally, in 1995, Edwards was involved in a head-on collision where his car "went under a semi-tractor trailer and then the trailer rolled over [his] car." (Ed.App. 145). Edwards suffered a closed head injury and a loss of consciousness. (Ed.App. 145).

Edwards has a full-scale IQ of 91, but scored as high as the 80th-90th percentile on several tests, including immediate visual memory, delayed visual memory, immediate recall of material read to him, delayed recall of material read to him, and generative phenomic naming. (Ed.App. 148). Yet Edwards scored very low on other tests, including at the bottom percentile on spelling and in the second percentile on arithmetic. (Ed.App. 148). Doctors have at times observed that Edwards's thought process "is extremely tangential and decompensates in the course of a conversation." (Ed.App. 149). They have also said that his writings are "hard to follow, not connected, and his thoughts are not following in a logical fashion." (Ed.App. 244).

2. On July 12, 1999, Edwards took a pair of shoes from a department store in downtown Indianapolis without paying. App. 17a-18a. The store's loss-prevention officer, who was not armed, tackled Edwards outside the store on a city sidewalk. App. 18a. During the confrontation, Edwards drew a 40-caliber handgun and fired three times. App. 18a. The bullets struck the right leg of a bystander and grazed the loss-prevention officer. App. 18a. Edwards fled. App. 18a. An FBI agent who happened by chased Edwards into a parking garage. App. 18a. The agent identified himself and ordered Edwards to raise his hands, but Edwards pointed his gun at the agent's face. App. 19a. The agent repeatedly yelled, "drop the gun," but when Edwards failed to comply with his orders, the agent ultimately drew his own weapon and fired at Edwards, striking him in the thigh. App. 19a. Edwards fell to the ground and was taken into custody. App. 19a.

The State charged Edwards with attempted murder, battery with a deadly weapon, criminal recklessness, and theft. App. 17a. He was initially incarcerated in the Marion County Jail, unable to post the $30,000 bond for his release. (Ed.App. 5, 130). The trial court appointed a public

defender to represent Edwards, but while awaiting trial, Edwards personally wrote to the judge attempting to plead guilty to battery and criminal recklessness and moving to dismiss counsel. (Ed.App. 7, 118-20). During this same period, Edwards frequently sent other letters to the court, apprising the judge of Edwards's charitable work, achievements, and future goals, including his "exceptance in a magnate program selected from 5000 as one of 5," and his being "offered job with dupety sheriff's of Indianapolis Indiana." (Ed. App. 99-102).

3. On December 7, 1999, Edwards's public defender filed a motion for a competency hearing and a notice of intent to assert insanity as a defense. (Ed.App. 13, 128-29, 282). Based on her experience with Edwards, counsel believed that he lacked the ability to participate in the proceedings and to assist in the preparation of his defense. (Ed.App. 128). The court appointed Drs. Ned P. Masbaum, a neuropsychiatrist at Methodist Hospital in Indianapolis and formerly the Lieutenant Commander and Chief of Psychiatry at the United States Naval Hospital, and Dwight W. Schuster, also a neuropsychiatrist, to examine Edwards. (Ed.App. 13, 656, 662).

Drs. Masbaum and Schuster filed their reports in late December 1999. (Ed.App. 282-83). Both documented that Edwards suffered from delusional disorder "grandiose type," but concluded that, despite Edwards's delusions, he was competent to stand trial. (Ed.App. 282-83). However, Edwards's counsel had independently retained Dr. Lance E. Trexler, a neuropsychologist, who submitted a conflicting report on February 23, 2000. (Ed.App. 283). Dr. Trexler concluded that Edwards was not competent to stand trial because he displayed signs of a major thought disorder, decompensated during the course of conversations, and experienced hallucinations. (Ed.App. 283-84).

Based on these reports, on August 16, 2000, Marion Superior Court Judge Gary L. Miller found Edwards incompetent to stand trial and committed him to the Indiana Department of Mental Health for evaluation and treatment. (Ed.App. 168). The Department of Mental Health assigned Edwards to Logansport State Hospital. (Ed.App. 175).

Several months later, on March 14, 2001, Logansport State Hospital notified the trial court that Edwards "has attained the ability to understand the proceedings and assist in the preparation of his defense." (Ed.App. 183). In support of that finding, the Hospital's staff psychiatrist, Steven H. Berger, found that Edwards "appears to be psychiatrically normal" and is "free of psychosis, depression, mania, and confusion." (Ed.App. 185). Consequently, pursuant to a March 16, 2001 order from the trial court (Judge Grant W. Hawkins now presiding), Edwards was transported from Logansport to the Marion County Jail. (Ed.App. 187).

On June 26, 2001, however, Edwards filed, without the assistance of his court-appointed counsel, a document styled "Motion of Permissive Intervention." (Ed.App. 195-215). Part A of this document began by stating, "In the year ["1999"] nineteen hundred and nindy nine. The defendant Mr. Ahmad Edwards applyed for a job in the fifth largest shopeing mall in Indiana." (Ed.App. 196). The document continued, "To relize the existence of a genuine issue as to an material fact by interrogatories of the county Marion in Indianapolis, Indiana to help cure the vital stictics, in witch negligence was being apoximated as the cause of the exacerbation of the young American citizens of the United States in Indianapolis, Indiana injury." (Ed.App. 196-97).

In light of this "peculiar" motion, and mindful of Dr. Trexler's previous diagnosis of delusional disorder, on September 12, 2001, Edwards's counsel questioned the hospital's competency determination and moved to release

Edwards's Logansport State Hospital records. (Ed.App. 225-27). That same day, the trial court ordered further psychiatric testing by Drs. Masbaum and Schuster. (Ed.App. 229, 284).

In a report filed in October 2001, Dr. Masbaum found that Edwards still suffered from a delusional disorder, but understood the charges against him and could aid counsel in his defense. (Ed.App. 232-34). Dr. Schuster found that Edwards had shown significant improvement since being diagnosed as delusional in his previous evaluation, was able to understand the charges and proceedings, and was able to assist counsel with his defense. (Ed.App. 285-86). Based on these reports, in April 2002, the trial court deemed Edwards competent and set a jury trial for September 30, 2002 (Ed.App. 282-88), but later continued it until December 2, 2002. (Ed.App. 34).

Just before trial, in November 2002, defense counsel requested that Edwards be examined yet again for competency, this time by another psychiatrist of the defense's choosing, Dr. Phillip Coons. (Ed.App. 349, 355). The court approved, and in a report dated November 26, 2002, Dr. Coons diagnosed Edwards as schizophrenic and noted Edwards's history of dyslexia and substance use. (Ed.App. 352). Dr. Coons opined that Edwards could understand the charges, but was unable to assist with his defense due to schizophrenic delusions. (Ed.App. 353-54). Based on this report, on November 27, 2002, Edwards's counsel submitted a "Suggestion of Incompetency," claiming that Edwards was incapable of effective communication with counsel and that he lacked "an adequate understanding of the role of the parties to proceed to trial." (Ed.App. 409-11).

The trial court vacated the December 2, 2002, trial, but again appointed Drs. Masbaum and Schuster to examine Edwards. (Ed.App. 38). Both doctors concluded that Edwards was legally competent to stand trial. (Ed.App. 403,

408). Dr. Masbaum found possible malingering, and Dr. Schuster observed no evidence "of delusional ideation or psychotic thinking." (Ed.App. 402, 407). The court set a competency hearing for April 29, 2003. (Ed.App. 39).

Several months after that hearing, on November 24, 2003, the trial court again, based in part on evaluations by Drs. Coons and Trexler, found Edwards incompetent to stand trial. App. 2a-3a. The court ordered that Edwards be returned to the custody of the Indiana Department of Mental Health for evaluation and treatment. (Ed.App. 439).

During Edwards's ensuing six-month stay at the Logansport State Hospital, the staff forensic psychiatrist observed that Edwards's schizophrenia included "symptoms of disorganized thought processes, delusional ideation, hallucinations, and ideas of reference." (Ed.App. 445). Edwards was treated for schizophrenia and a depressive disorder with individual and group psychotherapy, counseling, and 300 mg/day of Seroquel, an antipsychosis medication. (Ed.App. 445, 450-551).

As a result of this treatment, on July 29, 2004, the Logansport State Hospital once again certified to the court that Edwards was competent to stand trial. (Ed.App. 43, 449). The Hospital found that Edwards "has attained the ability to understand the proceedings and assist in the preparation of his defense." (Ed.App. 449). The supporting report, by staff forensic psychiatrist Dr. Robert Sena, stated that Edwards's mental symptoms "have greatly improved" and that he "no longer has hallucinations, delusions, and ideas of reference." (Ed.App. 451). The doctor further observed, "His thought processes are no longer disorganized." (Ed.App. 451).

Based on this report, Judge Hawkins ordered Edwards returned to the Marion County Jail on August 2, 2004. (Ed.App. 455). Without any further competency hearing,

Edwards received a two-day trial on June 27-28, 2005. App. 3a. He asked to proceed *pro se*, but Judge Hawkins denied his request based "primarily on the fact that [he] wanted to proceed under the defense of insanity and that that request would have caused a continuance." App. 34a.

The jury found Edwards guilty of theft and criminal recklessness, but hung on the attempted-murder and battery-with-a-deadly-weapon charges. App. 3a. The court remanded Edwards to the custody of the Marion County Jail and withheld sentencing on the theft and criminal-recklessness convictions until after retrial on the other charges, which the court set for December 19-21, 2005. (Ed.App. 53, 59; Trial Tr. 486).

4. Prior to the second trial, Edwards formally petitioned the court to proceed *pro se*. App. 32a. The court denied Edwards's request, finding that, while Edwards was mentally competent to stand trial and to assist counsel, his delusions, schizophrenia, communication troubles, and related problems with focus rendered him incapable of self-representation. App. 36a-37a. In so ruling, the court relied on Edwards's long history of incompetence and observed that the present "finding of competence was conditioned by the doctors on the assistance of counsel." App. 39a.

In reaching this conclusion, the court no doubt had in mind (among other things) Edwards's voluminous correspondence with the court—including a crossed-out list of bedding supplies, a dress code, and a fictitious business letter. (Ed.App. 99-103, 125, 153-66, 188-223, 252-81, 289-348, 377-99, 419-34, 458-91, 553-68, 620-31, 646). As one example of this correspondence, in a "Petition for Hearing" dated November 1, 2004, Edwards urged the court to "consult, the best position to advise the groups of any, recourse that may be available established and to be action of law, certain of the rules admissions not to fail responsibilities of other officials, counterproductive resolved in the court

system therein any action that might be construed as interference." (Ed.App. 488). He also wrote, in a "Motion to Dismiss" dated December 19, 2005, "Defendant moves the grounds of this court to dismiss this cause: if any notation of grand avoids a bill immunity proceeding at criminal information true-bill grounds. Defendant prays psalm 15.5 for innocent of court property to be dismissed wherefore, so shall it be done." (Ed.App. 624).

5. Edwards's second trial proceeded as scheduled on December 19, 2005. Edwards himself would have argued that he fired at the unarmed loss-prevention officer in self-defense. App. 34a-35a. However, because witnesses unequivocally testified that Edwards had begun to walk away from the officer before turning back to fire while the officer lay prone on the sidewalk, his counsel jettisoned the self-defense theory and instead argued that Edwards lacked the requisite intent for murder. App. 35a. More specifically, counsel contended that Edwards was trying to miss—otherwise the officer would have been killed. As counsel put it to the officer on cross-examination, "the only [other] explanation is that the bullet didn't leave the barrel of that gun and travel in a straight direction toward your head." (Trial Tr. 166). Counsel even tried to show that the loss-prevention officer was wrong about where Edwards was aiming by having the officer demonstrate for the jury how the physical confrontation played out. (Trial Tr. 144).

These efforts notwithstanding, the jury convicted Edwards of attempted murder and battery with a deadly weapon. App. 3a. The court sentenced Edwards on all four convictions to the presumptive sentence on each count, running concurrently, for a total executed sentence of 30 years. App. 3a.

6. On appeal, Edwards argued that his convictions for attempted murder and battery with a deadly weapon were invalid because the trial court had improperly denied

Edwards the right to represent himself, in violation of the Sixth Amendment. App.17a. The Indiana Court of Appeals agreed, concluding it was bound to reach this holding by *Godinez v. Moran*, 509 U.S. 389, 391 (1993). App. 17a, 24a. Still, the Court of Appeals' sentiments were with the trial court, stating that "we are entirely sympathetic to the conclusion reached by the trial court and appreciate that it was simply trying to ensure that Edwards received a fair trial." App. 24a.

On discretionary review, the Indiana Supreme Court likewise ruled that Edwards's right to self-representation had been violated, but acknowledged that the trial court's finding that Edwards was "incapable of adequate self-representation was, at a minimum, reasonable." App. 14a. Because improper denial of the right to self-representation is structural error, harmless-error analysis could not save the convictions. App. 14a; *see also McKaskle v. Wiggins*, 465 U.S. 168, 177 n.8 (1984). Accordingly, the court reversed Edwards's convictions for attempted murder and aggravated battery. App. 15a.

The Indiana Supreme Court's decision rested solely on federal law. App. 4a n.1 (refusing to address whether Edwards had a right to proceed *pro se* under the Indiana Constitution because federal law was binding); *see also* App. 13a-14a (holding that *Faretta* and *Godinez* compelled the court's result). The court observed that *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 156 (2000), cast some doubt on the historical rationale for the right to self-representation. App. 12a-13a (citing the concurring opinions of Justices Kennedy, Breyer, and Scalia). However, it ultimately concluded that while "these separate opinions clearly acknowledge that *Martinez* cast doubt on *Faretta* . . . neither *Martinez* nor any other Supreme Court decision has overruled *Faretta* or *Godinez*." App. 13a. The court therefore rejected the State's argument that the standard for

competency to waive counsel should be something more than the *Dusky* standard—even though it found that argument had "some force"—because ultimately the court was "bound by United States Supreme Court precedent." App. 4a.

REASONS FOR GRANTING THE PETITION

The Court should grant certiorari to resolve the deep conflict among the federal circuits and state courts regarding whether States may impose a higher competency standard for self-representation than the minimal competency required to stand trial under *Dusky v. United States*, 362 U.S. 402 (1960). Allowing criminal defendants such as Edwards to represent themselves undermines fair trials and erodes public confidence in criminal convictions and the criminal-justice system generally. *See Massey v. Moore*, 348 U.S. 105, 108 (1954) ("No trial can be fair that leaves the defense to a man who is insane, unaided by counsel, and who by reason of his mental condition stands helpless and alone before the court.").

I. There is a Conflict Among Federal Circuits and State Supreme Courts over Whether Legally Competent but Mentally Impaired Criminal Defendants May Be Denied Self-Representation

Criminal defendants have the constitutional right to waive trial counsel when they "voluntarily and intelligently elect[] to do so." *Faretta v. California*, 422 U.S. 806, 807 (1975). Further, due process does not *require* criminal courts to impose a higher standard of competency to waive counsel than to stand trial—a standard that asks only whether a defendant understands the charges and is able to assist counsel. *See Godinez v. Moran*, 509 U.S. 389, 402 (1993) (citing *Dusky v. United States*, 362 U.S. 402 (1960)). However, the Court explained in *Godinez* that "*States are free to adopt* competency standards that are *more elaborate*

than the *Dusky* formulation," even though "the Due Process Clause does not *impose* these additional requirements." *Godinez*, 509 U.S. at 402 (emphasis added).

The "free to adopt" statement has prompted judicial disarray with respect to the right to self-representation at trial. In the wake of *Godinez*, a well-developed, growing conflict has emerged among federal circuits and state supreme courts as to whether courts may deny self-representation at trial to defendants who, though competent under *Dusky*, are functionally unable to defend themselves owing to a mental impairment. Many courts read *Godinez* to permit a different standard for waiving counsel than for standing trial, but many others read it to require the same standard as for trial competency.

1. Cases Reading *Godinez* to *Permit* Different Standards:

a. On one side of the conflict, some courts after *Godinez* have held—in contrast to the decision below—that States may adopt a standard for waiving counsel that is higher than the competence standard for standing trial. According to the Utah Supreme Court, because *Godinez* holds that "the minimum requirements for competency to waive assistance of counsel are no greater than the requirements for competency to stand trial . . . [s]ome states have established additional requirements for competency to waive counsel." *State v. Arguelles*, 63 P.3d 731, 751 (Utah 2003).

The Wisconsin Supreme Court, to begin, has reaffirmed its pre-*Godinez* precedent establishing a higher standard of competency for waiving counsel. *See State v. Klessig*, 564 N.W.2d 716, 724 (Wis. 1997). The court explained that Wisconsin's "higher standard" survived *Godinez* because it was not based solely on the Due Process Clause, but was "primarily" decided "on a careful contemplation of public

policy." *Id.* at 723. Wisconsin trial courts may deny self-representation based on "the defendant's education, literacy, fluency in English, and any physical or psychological disability which may significantly affect his ability to communicate a possible defense to the jury." *Id.* at 724.

For its part, the Seventh Circuit, in reviewing the Wisconsin standard, accepted the proposition that *Faretta* and *Godinez* leave room for States to limit the right to self-representation beyond the mere competency to stand trial. *See Brooks v. McCaughtry*, 380 F.3d 1009, 1013 (7th Cir. 2004). Judge Posner, writing for a unanimous court, concluded that "[n]o federal policy, whether found in the due process clause of the Fourteenth Amendment or anywhere else, is offended by" a State's preventing mentally impaired defendants from representing themselves, even if doing so "may allow some of its criminal defendants to whipsaw it." *Id.* at 1012. Accordingly, "we do not think that Wisconsin's approach violates the rule of *Godinez*." *Id.* at 1013.

b. Other courts, perhaps in an attempt to avoid the harsh rule they believe *Godinez* imposes upon them, have used the "knowing and voluntary waiver" portion of the *Faretta* rule to impose a higher standard on those wishing to exercise their right of self-representation. For example, in the semblance of determining whether a defendant voluntarily, knowingly, and intelligently waived the right to counsel, Rhode Island has effectively adopted a higher standard of mental competence to waive counsel. In *State v. Thomas*, 794 A.2d 990, 994 (R.I. 2002), the court explained that it previously had "determined that a defendant is subjected to a heightened standard of competency when he attempts to waive counsel and appear *pro se*." Rhode Island trial courts may consider, among other things, "the background, the experience, and the conduct of the defendant at the hearing, including his age, his education, and his physical and mental health." *State v. Briggs*, 787 A.2d 479, 486 (R.I. 2001).

The Illinois Supreme Court has similarly embraced a standard for waiving counsel that incorporates mental-competency considerations beyond what *Faretta* and *Dusky* demand. In *People v. Lego*, 660 N.E.2d 971, 978-80 (Ill. 1995), the court granted post-conviction relief to a defendant who had represented himself at trial, citing the defendant's mental illness as a reason to question his capacity to make a knowing and intelligent waiver of counsel.

c. Still other state supreme courts—those of California, Maryland, Utah, and Wyoming—have recognized that States have the freedom to apply a higher standard of competency for self-representation, but have (for the moment at least) chosen not to exercise that freedom. *See People v. Welch*, 976 P.2d 754, 777 (Cal. 1999); *Gregg v. State*, 833 A.2d 1040, 1060 (Md. 2003); *Arguelles*, 63 P.3d at 751; *Hauck v. State*, 36 P.3d 597, 602 (Wyo. 2001); *see also People v. Woods*, 931 P.2d 530, 534 (Colo. Ct. App. 1996); *Commonwealth v. Pamplona*, 789 N.E.2d 160, 164 (Mass. App. Ct. 2003).[1]

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[1] In *Commonwealth v. Barnes*, 504 N.E.2d 624, 627-28 & n.3 (Mass. 1987), the Supreme Judicial Court of Massachusetts held that a hearing on the defendant's competence to waive counsel, and possibly a psychiatric examination, was required where there was substantial evidence of the defendant's "mental disorder or impairment." It imposed a "vaguely higher" standard of competence to waive counsel than to stand trial because "the waiver of counsel necessarily embraces an assessment of the defendant's mental capacity to conduct his own defense." *Id.* at 628 n.3. Following *Godinez*, in *Commonwealth v. Simpson*, 704 N.E.2d 1131, 1135 n.5 (Mass. 1999), the court cited *Barnes* (among other cases) with approval and said that proving a defendant's competence "to act as his own lawyer (with standby counsel) may require a greater showing than that the defendant is competent to stand trial." However, the

2. Cases Reading *Godinez* to *Prohibit* Different Standards: On the other side of the conflict, while the Seventh Circuit allows different standards for waiving counsel than for standing trial, several other federal circuits—the Third, Fourth, Fifth, Eighth, Ninth, Tenth, and D.C. Circuits—mandate use of the same standard—although they acknowledge that waiver must be knowing and voluntary. *See United States v. Ellerbe*, 372 F.3d 462, 466 (D.C. Cir. 2004) ("The Supreme Court has expressly held . . . that a defendant who is competent to stand trial is also competent to waive his right to assistance of counsel—all that is necessary is that he do so intelligently and voluntarily."); *Shafer v. Bowersox*, 329 F.3d 637, 650 (8th Cir. 2003) (finding "no distinction between the competency required to stand trial and the competency to waive constitutional rights," and allowing that mental disorder can impede a knowing and voluntary waiver only if it precludes understanding the consequences of the waiver); *United States v. Peppers*, 302 F.3d 120, 131 n.9 (3d Cir. 2002) ("[T]he standard for competency to stand trial is the same as the standard to plead guilty or to waive counsel, except that a person seeking to waive a constitutional right must also demonstrate that the waiver is knowing and voluntary."); *United States v. Frazier-El*, 204 F.3d 553, 559 (4th Cir. 2000) ("[T]he standard of competence for waiving counsel is

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court then alluded to the knowing-and-voluntary standard and acknowledged that *Godinez* states that the constitutional standards for standing trial and for waiving trial counsel are the same. *See id.* *Simpson* did not resolve the matter, however, as it remanded the case over defendant's *Dusky* competency. *See id.* at 1136. Then, in *Pamplona*, the Massachusetts Appeals Court seemingly applied a heightened standard for "competence to waive counsel" by considering that the defendant "conducted himself appropriately" before the court by cross-examining a witness and introducing evidence. *See Pamplona*, 789 N.E.2d at 164.

identical to the standard of competence for standing trial."); *Dunn v. Johnson*, 162 F.3d 302, 307-08 (5th Cir. 1998) ("The level of competence required to waive the right to counsel is the same as that required to stand trial. As we hold above, Dunn was competent to stand trial. It necessarily follows that he also was competent to waive the right to counsel."); *United States v. Hernandez*, 203 F.3d 614, 620 n.8 (9th Cir. 2000) ("[T]he Supreme Court held that a defendant's competence to waive the right to counsel is measured by the same standard under which competence to stand trial is evaluated."); *United States v. Boigegrain*, 155 F.3d 1181, 1186 (10th Cir. 1998) ("In *Godinez*, the Court held that the degree of competence necessary to waive the right to counsel is identical to the degree of competence necessary to stand trial.").

Similarly, a large group of state courts of last resort has read *Godinez*'s "free to adopt" statement only to permit a single standard for *both* competence to stand trial *and* competence to waive counsel. These courts will overturn a trial judge's decision to require counsel wherever the defendant has been deemed competent to stand trial, no matter how mentally incapable a defendant may be to defend himself. *See State v. Day*, 661 A.2d 539, 548 (Conn. 1995); *Lamar v. State*, 598 S.E.2d 488, 491 (Ga. 2004); *State v. Rater*, 568 N.W.2d 655, 660 (Iowa 1997); *State v. Camacho*, 561 N.W.2d 160, 172 (Minn. 1997); *State v. Wise*, 879 S.W.2d 494, 507 (Mo. 1994); *State v. Jordan*, 804 N.E.2d 1, 8 (Ohio 2004); *Commonwealth v. Starr*, 664 A.2d 1326, 1339 (Pa. 1995); *State v. Raymond*, 563 N.W.2d 823, 827 (S.D. 1997); *Ex parte Mines*, 26 S.W.3d 910, 912 (Tex. Crim. App. 2000); *In re Fleming*, 16 P.3d 610, 614 (Wash. 2001); *see also State v. Turner*, 2000 WL 674583, at *3-4 (Tenn. Crim. App. 2000).

* * *

These distinct groups of state and federal decisions stand in direct, meaningful conflict. Many jurisdictions would have concurred with the decision below, but others would have affirmed Edwards's convictions given his history of serious mental illness, notwithstanding his technical legal competency. The table below charts this post-*Godinez* conflict, which comprises 29 jurisdictions (including three state intermediate appellate decisions). Since *Godinez*, in at least 60 cases nationwide a legally competent but mentally impaired defendant has sought to waive the right to trial counsel.[2] The issue thus remains vital, and the conflict will not abate without the Court's intervention.

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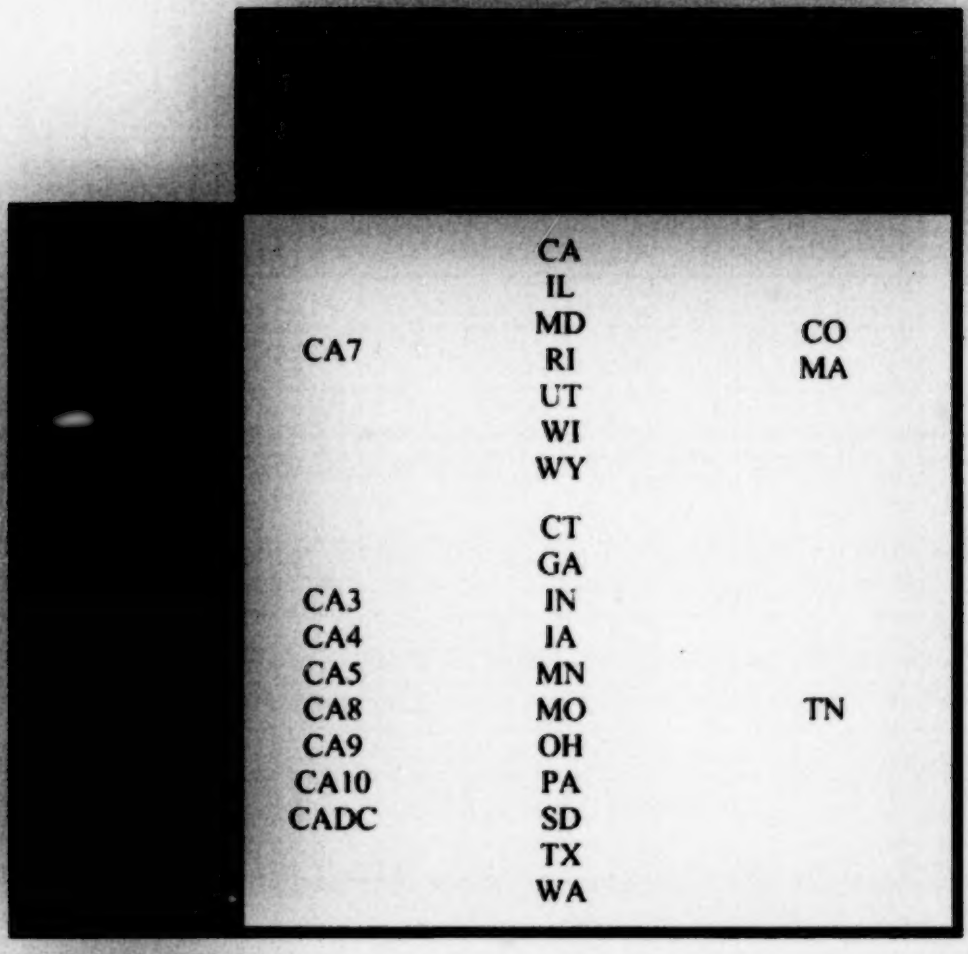
[2] In addition to cases already cited, *see United States v. Lazo-Romero*, 2007 WL 1545184 (9th Cir. 2007); *Folsom v. Franklin*, 2007 WL 1445920 (10th Cir. 2007); *Maynard v. Boone*, 468 F.3d 665 (10th Cir. 2006); *United States v. Zedner*, 193 F.3d 562 (2d Cir. 1999); *Sobey v. Britten*, 2007 WL 1291085 (D. Neb. 2007); *Souza v. United States*, 2006 WL 3692921 (N.D. Ohio 2006); *People v. Jackson*, 2007 WL 754749 (Cal. Ct. App. 2007); *People v. Houston*, 2007 WL 1519548 (Cal. Ct. App. 2007); *People v. Lyles*, 2007 WL 1519778 (Cal. Ct. App. 2007); *People v. Robinson*, 2007 WL 1536786 (Cal. Ct. App. 2007); *People v. Blaylock*, 2006 WL 330557 (Cal. Ct. App. 2006); *People v. Reyes*, 2006 WL 416949 (Cal. Ct. App. 2006); *People v. Pullett*, 2006 WL 1731300 (Cal. Ct. App. 2006); *People v. F.J.*, 2006 WL 3291759 (Cal. Ct. App. 2006); *Moon v. Superior Court*, 36 Cal. Rptr. 3d 854 (Cal. Ct. App. 2005); *State v. Caracoglia*, 895 A.2d 810 (Conn. Ct. App. 2006); *Alston v. State*, 894 So.2d 46 (Fla. 2004); *Fleck v. State*, 956 So.2d 548 (Fla. Ct. App. 2007); *People v. Coleman*, 660 N.E.2d 919 (Ill. 1995); *State v. Gauthier*, 941 So.2d 642 (La. Ct. App. 2006); *People v. Smith*, 2004 WL 1057741 (Mich. Ct. App. 2004); *State v. Khaimov*, 1998 WL 747138 (Minn. Ct. App. 1998); *State v. Cassell*, 590 S.E.2d 333 (N.C. Ct. App. 2004); *Johnson v. State*, 17 P.3d 1008 (Nev. 2001); *State v. Pruitt*, 2004 WL 3017252 (Ohio Ct. App. 2004); *Commonwealth v. Jermyn*,

The Multi-Jurisdictional Post-*Godinez* Conflict



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709 A.2d 849 (Pa. 1998); *Carrillo v. State*, 2006 WL 2925378 (Tex. Crim. App. 2006); *Moore v. State*, 999 S.W.2d 385 (Tex. Crim. App. 1999); *Edwards v. Commonwealth*, 644 S.E.2d 396 (Va. Ct. App. 2007); *State v. Bean*, 762 A.2d 1259 (Vt. 2000); *State v. Pollard*, 657 A.2d 185 (Vt. 1995); *State v. Marquardt*, 705 N.W.2d 878 (Wis. 2005).

II. Review is Warranted because Allowing the Mentally Impaired to Represent Themselves at Trial Erodes the Integrity of the Criminal-Justice System

As noted, the trial-competence standard of *Dusky* requires only that a criminal defendant be aware of the charges against him and be able to assist counsel with his defense. *See Dusky v. United States*, 362 U.S. 402, 402 (1960). This inquiry, however, explicitly presumes that the defendant will *not* represent himself; it therefore cannot conceivably be understood to test whether the defendant has the minimum cognitive capacity to do so. App. 6a. There is no reason, as a matter of logic or common sense, why someone who is competent to assist counsel (and therefore can stand trial) has the minimum capacity to present a case such that the resulting trial comports with due process.

The criminal-justice system at a minimum is supposed to be fair. *See Ford v. Wainwright*, 477 U.S. 399, 424 (1986) (Powell, J., concurring) (explaining that "fundamental fairness is the hallmark of the procedural protections afforded by the Due Process Clause"). Affording self-representation to the mentally impaired undermines this important goal and often leaves the system with a black eye. Although criminal defendants have different motivations for seeking to represent themselves, many *pro se* defendants "are so totally out of touch with reality that they believe they can do it all themselves." John F. Decker, *The Sixth Amendment Right to Shoot Oneself in the Foot: An Assessment of the Guarantee of Self-Representation Twenty Years After* Faretta, 6 Seton Hall Const. L.J. 483, 487 (Spring 1996). Frequently, those who choose self-representation are the least up to the task, leading to trials that "make a mockery of justice." *Id.* at 485.

1. Take the trial of Scott Panetti, which this Court reviewed just last term. *See Panetti v. Quarterman*, __ U.S.

__, 127 S. Ct. 2849 (2007). After a jury found Panetti competent to stand trial, "Mr. Panetti experienced his 'April Fool's Day revelation' that God had cured his schizophrenia." *Panetti*, Pet. Br. at 10. Thus "cured," Panetti asked to represent himself, and the court said yes. *See id.* at 11. Panetti thereafter came to court wearing a cowboy outfit described by his standby counsel as a "'Tom Mix' style costume like an old TV western . . . It was a joke. It was like out of a dime store novel." *Id.* at 11 n.9. Panetti's defense was "not guilty by reason of insanity," and he explained to the jury in his opening statement that "only an insane person could prove insanity." *Id.* at 11. Panetti asked the court "for over 200 subpoenas, including John F. Kennedy, the Pope, and Jesus." *Id.*

Panetti explained during voir dire that "[t]he death penalty doesn't scare me, sure but not much. Be killed, power line, when I was a kid. I've got my Injun beliefs as a shaman. I sent the buffalo horn to my sister. Adjustment, Jesus wrote . . . I was named 'He who doesn't cry' because I didn't cry when I should have, and I must admit, though, in Gillespie County Jail when I was in my little suicide box where there was an old boy committed suicide, I went through about a week of pretty much scuba diver's tears; although, I don't scuba." *Id.* at 12. Panetti questioned prospective witnesses about nonsensical things like belt buckles, explaining that this line of questioning "has to do with jailhouse religion. It has to do what some men would do for a belt buckle. It has to do with the difference between a rodeo hand and a buckaroo poet. It has to do with my whole outlook and this will come up, God forbid, in the punishment stage." *Id.* at 13. Panetti assumed an alternate personality named "Sarge" when he testified about the crime. *See id.* at 14. Panetti's standby counsel summarized this behavior at trial as "'bizarre'" and "'scary,'" making "the trial 'truly a judicial farce, and a mockery of self-representation.'" *Panetti*, 127 S. Ct. at 2849.

Not surprisingly, Panetti received the death penalty. *See id.* at 2847-48. Over 12 years later, after several rounds of appeals in the Texas state courts and two prior petitions for certiorari, the Court finally interceded because it appeared an insane man was about to be executed. *See id.* The case is still not over—several more rounds of trial and appellate litigation over his mental state are in the offing. *See id.* at 2863 (remanding so that the district court could develop an evidentiary record to resolve constitutional claims). This entire quagmire over Panetti's punishment might have been avoided had Panetti not been allowed to represent himself in the first instance. *Cf. Panetti v. Cockrell*, 2003 WL 21756365, at *3-4 (5th Cir. 2003) (rejecting the argument that *Panetti* was incompetent to waive counsel in light of *Godinez*).

Unfortunately, Scott Panetti is just one example. Consider also the case of Colin Ferguson, the Long Island Railroad killer, who fired his lawyers for questioning his competence and told the jury that there was a 93-count indictment against him only because the crimes occurred in 1993. *See* Decker, 6 Seton Hall Const. L.J. at 487 n.7. Or serial killer Ted Bundy who, instead of presenting mitigating evidence at trial, "insisted on performing a mock wedding ceremony with his fiancée" in front of the jury. *See Bundy v. Dugger*, 816 F.2d 564, 567 (11th Cir. 1987); *see also Bundy v. Dugger*, 850 F.2d 1402, 1412 (11th Cir. 1988). These cases demonstrate the problems inherent in allowing the mentally ill to represent themselves and give sad substance to Justice Blackmun's dissent in *Godinez*: "To try, convict, and punish one so helpless to defend himself contravenes fundamental principles of fairness and impugns the integrity of our criminal justice system." *Godinez v. Moran*, 509 U.S. 389, 417 (1993) (Blackmun, J., dissenting).

These also are only a few of the self-representation cases that have captured the public eye—and are likely the tip of iceberg when it comes to mentally impaired but legally

competent defendants who have chosen to try their own cases. The consequences often are disastrous for both the defendants and the integrity—not to mention dignity—of the criminal-justice system.

2. Unfortunately, attempts to gather empirical data about *pro se* defendants, their reasons for choosing self-representation, and their success rates have not been fruitful. *See, e.g.*, Erica J. Hashimoto, *Defending the Right of Self-Representation: An Empirical Look at the Pro Se Felony Defendant*, 85 N.C. L. Rev. 423, 441-46 (Jan. 2007) (presenting results of an empirical study that the author acknowledged to be flawed because of a small sample size, missing data, and selection bias). But there can be no doubt that mentally ill defendants all too frequently attempt self-representation, with bad outcomes for themselves and the entire criminal-justice system. *See* n.1, *supra*.

Moreover, the lack of aggregate quantitative data hardly matters to a public that learns the stories of defendants such as Panetti—and perhaps one day Edwards if he ultimately represents himself at trial. Allowing mentally ill defendants to elect self-representation casts doubt on the integrity of the criminal-justice system, pure and simple. *See, e.g.*, Jessica McBride, *How Can an Insane Man Defend Himself?*, Milwaukee J. & Sentinel, Feb. 15, 2004, at J1, *available at* 2004 WLNR 4682293, at *4 (quoting a doctor who had treated Panetti as saying, "My God. How in the world can our legal system allow an insane man to defend himself?"); Ralph Blumenthal, *Insanity Question Lingers as Texas Execution is Set*, N.Y. Times, Feb. 4, 2004, at A12, *available at* 2004 WLNR 5530429, at *2 (quoting the executive director of the defender service as saying, "Allowing a schizophrenic in a cowboy costume to represent himself in a death penalty case gives new meaning to the term 'frontier justice.'"); Howard Witt, *Inmate Granted Stay*, Chi. Trib., Feb. 5, 2004, at 16, *available at* 2004 WLNR 19909681, at *3 ("Some of Panetti's former doctors and lawyers, who

watched in the courtroom as Panetti rambled disjointedly, badgered witnesses and menaced the jury, later pronounced the trial a 'farce' and a 'circus.'").

There must be some limit on *Faretta* in order to ensure that all defendants, even those who are mentally ill, receive fair trials, and in order to assure the public of the same.

3. Limiting *Faretta* rights for the mentally impaired would not require a rollback of precedent or a leap of logic. The Court in many ways has already laid the doctrinal groundwork. *Faretta* itself recognized that, under a long line of cases, "the help of a lawyer" has been regarded as "essential to assure the defendant a fair trial." *See Faretta v. California*, 422 U.S. 806, 832-33 (1975). The Court nonetheless recognized a right to waive trial counsel, but in doing so, it principally rejected the notion that a defendant's lack of technical legal competence could be a reason to deny waiver. *See id.* at 836. That holding is not implicated here. The State asks only that the Court conclude that, at some point, permitting a defendant with profound mental impairments to represent himself at trial may tax the fairness of the criminal-justice system more than it can bear, even if the defendant is legally competent to stand trial.

Nor does *Godinez* present doctrinal obstacles. *Godinez* recognized a difference between competency to *waive* the right to counsel and competency to *represent* oneself. *See Godinez*, 509 U.S. at 396. It held that, as far as the Due Process Clause is concerned, a defendant who is competent to stand trial *need* be no more competent to waive the right to counsel. *See id.* at 399. The Court in *Godinez* did not, however, purport to create new constitutional law regarding a trial-competent defendant's inherent mental capacity to represent himself. It merely quoted *Faretta* for the point that lack of technical competence in the law cannot limit the right of self-representation. *See id.* at 399-400. The question remains whether any *other* limits on *Faretta* rights, such as

where their exercise would undermine the integrity of the proceedings, may exist.

In *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 161-62 (2000), the Court suggested that some such limits might in fact exist when it refused to apply *Faretta* to appellate proceedings. The Court reasoned that the right to self-representation is not absolute because "the defendant's interest in acting as his own lawyer" is at times outweighed by "the government's interest in ensuring the integrity and efficiency of the trial." *Id.* at 162. The Court even suggested that future cases could further limit the right of self-representation where it squarely conflicts with fundamental fairness and due process. *See id.* at 162-63.

This is just such a case. Indeed, it is precisely because trying a mentally impaired defendant without counsel so squarely conflicts with fundamental fairness that many state courts already impose minor limits on *Faretta*. *See* Part I-1, *supra*. Further, one federal circuit has repeatedly and openly invited the Court to address this clash of criminal due-process rights that *Faretta* sometimes precipitates. *See United States v. Erskine*, 355 F.3d 1161, 1167 (9th Cir. 2004) (noting the "difficulty inherent in preserving . . . simultaneously" the *Faretta* right and the "paramount right to a fair and reliable trial"); *United States v. Hernandez*, 203 F.3d 614, 625 & n.18 (9th Cir. 2000) (questioning the wisdom of *Faretta* given its tension with the right to counsel).

The Court should therefore take this case to resolve whether the Sixth Amendment and fundamental fairness permit courts to deny self-representation to defendants competent to stand trial under *Dusky*, but too mentally impaired to conduct a lucid defense alone.

III. Edwards was Twice Found Incompetent Even to Stand Trial, Which Makes this an Excellent Case for Considering Whether Courts May *Ever* Deny Defendants Self-Representation at Trial

Because of Edwards's borderline legal competency, this case is an especially useful vehicle for examining the limits of the *Faretta* right with respect to the mentally impaired. App. 14a. The Court may use this case to examine whether just about *any* record of mental impairment can justify denying a legally competent defendant the right to waive counsel. App. 14a ("The record in this case . . . presents an opportunity to revisit the holdings of *Faretta* and *Godinez*, if the Supreme Court of the United States decides that is to be done.").

To recap, throughout his nearly six years in state custody awaiting trial—either in the Marion County Jail or at Logansport State Hospital—Edwards has demonstrated a fundamental inability to communicate lucidly with the court—and at times even with his lawyer. His communication deficiencies have twice scuttled Edwards's trial under the minimal *Dusky* competency standard. (Ed.App. 168, 435-39). Edwards has now regained enough cognition to consult with his lawyer, but that is not nearly enough to communicate coherently with the court or a jury.

For example, as trial commenced and the court was considering Edwards's motion to dismiss his attorney, Edwards repeatedly interjected with gibberish objections—even after being told by the court that it was not his turn to speak. App. 33a-40a. Yet, during this same court session, Edwards consulted with counsel regarding whether, if allowed to represent himself, he would present the insanity defense. App. 34a. With little apparent trouble, Edwards was able to explain to his counsel that he would instead present a theory of self-defense. App. 34a-35a. Thus, while

Edwards demonstrated that he *could not* communicate coherently with the court (or conform to courtroom rules and procedures), he also demonstrated that he *could* assist his lawyer—and thus that he remained legally competent under *Dusky*.

This case, therefore, provides the Court with an excellent record for determining whether a criminal defendant who is so mentally impaired that he cannot communicate cogently with a court or a jury, but who is nonetheless legally competent to stand trial, must be permitted to represent himself at trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

STEVE CARTER
Attorney General
THOMAS M. FISHER*
Solicitor General
JULIE A. HOFFMAN BRUBAKER
JUSTIN F. ROEBEL
Deputy Attorneys General

Office of the Indiana
Attorney General
IGC South, Fifth Floor
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-6201

**Counsel of Record*

Counsel for Petitioner

Dated: August 15, 2007

APPENDIX

APPENDIX TO
PETITION FOR A WRIT OF CERTIORARI

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ATTORNEYS FOR APPELLANT
Michael R. Fisher
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE
Steve Carter
Attorney General of Indiana

Thomas M. Fisher
Solicitor General of Indiana

Justin F. Roebel
Deputy Attorney General
Indianapolis, Indiana

[filestamp]
FILED
MAY 17 2007
s/Kevin S. Smith
CLERK OF THE
INDIANA SUPREME COURT
COURT OF APPEALS
AND TAX COURT

IN THE
INDIANA SUPREME COURT

No. 49S02-0705-CR-202

AHMAD EDWARDS,

Appellant (Defendant below),

v.

STATE OF INDIANA,

Appellee (Plaintiff below).

Appeal from the Marion Superior Court
No. 49G05-9907-CF-121975
The Honorable Grant Hawkins, Judge

On Petition To Transfer from the Indiana Court of Appeals
No. 49A02-0602-CR-144

May 17, 2007

Boehm, J.

We hold that the federal constitutional right to self-representation requires that a defendant who is competent to be tried for a crime be permitted to proceed pro se if that is the defendant's choice.

Facts and Procedural Background

On July 12, 1991, Ahmad Edwards fired three gunshots after being confronted on a downtown Indianapolis street by Ryan Martin, a department store loss prevention officer who had seen Edwards steal a pair of shoes. One of the shots grazed Martin's back, and one struck a bystander in the ankle. Edwards fled. Special Agent Thomas Flynn of the FBI was in the vicinity and pursued Edwards into a parking garage where he found Edwards in a "crouched position" placing some items in a shaded corner. After several requests that Edwards drop his weapon, Flynn shot Edwards in the thigh and apprehended him. Three days later, Edwards was charged with attempted murder, battery with a deadly weapon, criminal recklessness, and theft.

Two disinterested psychiatrists found Edwards to be schizophrenic, and the trial court declared him incompetent to stand trial. In 2001, two years after evaluation and treatment, Edwards was evaluated by a staff psychiatrist at the Logansport State Hospital and found competent to stand trial. However, in November 2003, the trial court ordered a second examination by two different disinterested psychiatrists, and Edwards was once again found

incompetent. Finally, in July 2004, after another evaluation by a staff psychiatrist at the Logansport State Hospital, Edwards was found competent to stand trial. Edwards moved to proceed pro se, but the trial court denied that request, explaining that Edwards had stated his intention to raise insanity as a defense. The first trial took place in June 2005 and resulted in convictions of criminal recklessness and theft but a hung jury as to attempted murder and battery with a deadly weapon. The court declared a mistrial and scheduled a new trial on the latter two counts.

On August 3, 2005, Edwards moved to proceed pro se at the retrial, and his counsel moved to withdraw. The trial court granted both motions. It is unclear whether Edwards then had new appointed trial counsel. In any event, on August 31, 2005, Edwards again moved to proceed pro se, and the trial court denied that motion. On December 13, 2005, Edwards filed a final motion to proceed pro se. The motion was heard on the morning of December 19, 2005, the first day of Edwards's retrial. At that hearing the trial court denied Edwards's motion to proceed pro se. The trial court found that Edwards was competent to stand trial but lacked the additional capability required to conduct a defense.

After a three-day trial, Edwards was convicted of attempted murder and battery with a deadly weapon. He was sentenced to presumptive terms on those two counts and the two convictions from the first trial, with all four sentences to be served concurrently. This resulted in a sentence of thirty years, the presumptive sentence for attempted murder. Edwards appealed, claiming that he was denied his Sixth Amendment right to self-representation at his second trial. The Court of Appeals agreed and reversed and remanded this case for retrial of the attempted murder and battery counts. Edwards v. State, 854 N.E.2d 42, 45 (Ind. Ct. App. 2006). The State seeks transfer, which is granted by order concurrent with this opinion.

The Right to Self-Representation

The State contends that the trial court properly found Edwards incompetent to represent himself because he was incapable of presenting a "meaningful" defense. The State argues that due process and fundamental fairness of a criminal trial are overriding considerations that limit the right to self-representation. Edwards responds that the Sixth Amendment to the Federal Constitution guarantees an accused the right to self-representation.[1] He cites precedent from the Supreme Court of the United States confirming this broad right to self-presentation and holding that the standard for competence to waive the right to counsel is the same as that for competence to stand trial. Thus, Edwards contends that the trial court committed reversible error in finding him competent to stand trial but denying his request to represent himself. The State responds that more recent authority casts doubts on the continued vitality of the authorities on which Edwards relies. We agree that this contention has some force, but we conclude that we are bound by United States Supreme Court precedent and that the State must address its contention to that Court.

A. *Faretta v. California*

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[1] The right to counsel under Article 1, section 13 of the Indiana Constitution includes the right to appointed counsel for indigent defendants. See Stroud v. State, 809 N.E.2d 274, 279 (Ind. 2004). This right was recognized in Indiana before Gideon v. Wainwright, 372 U.S. 335 (1963) established a Fourteenth Amendment right to counsel in state court proceedings. State v. Minton, 234 Ind. 578, 581, 130 N.E.2d 226, 228 (1955); Taylor v. State, 227 Ind. 131, 135-36, 84 N.E.2d 580, 581 (1949). Edwards makes no separate argument under the Indiana Constitution. Because we conclude that Edwards had a right under the Federal Constitution to proceed pro se, whether he also enjoys the right under the Indiana Constitution is academic, and we do not address the issue.

Edwards cites Faretta v. California, 422 U.S. 806 (1975) as establishing his Sixth Amendment right to self-representation. In Faretta, the Supreme Court of the United States stated that the question as whether a state court may "hale a person into its criminal courts and there force a lawyer upon him, even when he insists that he wants to conduct his own defense." 422 U.S. at 807. The Court concluded that it could not. Id. In reaching this conclusion, the Court cited the structure of the Sixth Amendment, which provides:

> In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. Const. amend. VI. Faretta observed that these rights are guaranteed in state proceedings by the Fourteenth Amendment. Faretta, 422 U.S. at 818. Although the Sixth Amendment makes no explicit reference to a right to proceed pro se, Faretta found this right implicit because the right to defend is given to the accused, and counsel is to assist, not conduct, the defense. Id. at 818-20. The defendant therefore has a federal constitutional right to be the "master" of the defense. Id. at 820. The Faretta majority conceded that most criminal defendants would be better defended by counsel. Id. at 834. But to force unwanted counsel on a defendant "violates the logic" of the Sixth Amendment. Id. at 820.

Faretta also held that an accused must "knowingly and intelligently" forego his right to counsel and that the defendant need not possess the skill and experience of a lawyer in order to represent himself. Id. at 835 (quoting Johnson v. Zerbst, 304 U.S. 458, 464-65 (1938)). The Court observed that the record clearly demonstrated that Faretta

was "literate, competent, and understanding, and the he was voluntarily exercising his informed free will." Id. Noting that the trial judge informed Faretta that he would be required to follow the rules a lawyer would be required to follow, the court concluded that

> We need make no assessment of how well or poorly Faretta had mastered the intricacies of the hearsay rule and the California code provisions that govern challenges of potential jurors on voir dire. For his technical legal knowledge, as such, was not relevant to assessment of his knowing exercise of the right to defend himself.

Id. at 836 (footnote omitted).

Chief Justice Burger dissented in Faretta, joined by Justices Blackmun and Rehnquist. In his view, public confidence in the criminal justice system requires a capable defense, and right of the accused did not warrant converting it into an "instrument of self destruction." Id. at 839-40. Justice Blackmun filed a separate dissent, expressing a concern that self-representation could transform a trial into a "vehicle for personal or political self-gratification." Id. at 849.

B. *Godinez v. Moran*

A defendant is competent to stand trial if he has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and has a "rational as well as factual understanding of the proceedings against him." Dusky v. United States, 362 U.S. 402, 402 (1960). In Godinez v. Moran, 509 U.S. 389 (1993), the Supreme court of the United States reaffirmed the Dusky standard and held that the standard of competence to waive the right to counsel is the same as the standard of competence to stand trial. Moran was charged with three

murders and found competent to stand trial. Godinez, 509 U.S. at 391. He informed the court that he wished to plead guilty and discharge his counsel. Id. at 392. After advising Moran of his rights and warning him of the disadvantages of proceeding pro se, the trial court accepted his waiver of counsel and guilty pleas, concluding that Moran had "knowingly and intelligently" waived counsel and had entered his pleas "freely and voluntarily." Id. at 392-93.

Moran was sentenced to death for each of the three murders, and two of these were affirmed on appeal. Id. at 393. Two years later, Moran filed a petition for post-conviction relief alleging that he had been "mentally incompetent to represent himself." Id. After the state courts denied relief, Moran sought federal habeas corpus. Id. The Ninth Circuit reversed the district court's denial of habeas, concluding that competence to waive the right to assistance of counsel requires a higher level of mental function than is required to stand trial. Id. at 394.

The Supreme Court granted certiorari to address Moran's contention that a pro se defense requires "greater powers of comprehension, judgment, and reason than would be necessary to stand trial with the aid of an attorney" and therefore the standard of competence to waive counsel should be higher. Id. at 399. The Supreme Court rejected this claim, holding that "the competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right*, not the competence to represent himself." Id. The Supreme Court reiterated its observation in Faretta that "technical legal knowledge" has no relevance to the determination of whether a defendant is competent to waive his right to counsel and concluded that the standard of competence for waiving that right is not higher than that required to stand trial. Id. at 400.

Godinez also rejected Moran's claims based on Westbrook v. Arizona, 384 U.S. 150 (1966). In Westbrook,

a two-paragraph per curiam opinion, the Court had vacated a judgment affirming the petitioner's conviction because there had been "a hearing on the issue of [the petitioner's] competence to stand trial" but "no hearing or inquiry into the issue of his competence to waive his constitutional right to the assistance of counsel." 384 U.S. at 150. In Godinez, the Ninth Circuit reiterated its view, first expressed in Sieling v. Eyman, 478 F.2d 211, 214 (9th Cir. 1973), that Westbrook implied that the standard for competence to stand trial was not sufficient for waiver of counsel. Moran v. Godinez, 972 F.2d 263, 266 (9th Cir. 1992). The Supreme Court concluded that the Ninth Circuit had read too much into Westbrook. Godinez, 509 U.S. at 397. Rather, "there is no reason to believe that the decision to waive counsel requires an appreciably higher level of mental functioning than the decision to waive other constitutional rights." Id. at 399.

Godinez did, however, state that:

> A finding that a defendant is competent to stand trial, however, is not all that is necessary before he may be permitted to . . . waive his right to counsel. In addition to determining that a defendant who seeks to . . . waive counsel is competent, a trial court must satisfy itself that the waiver of his constitutional rights is knowing and voluntary. In this sense there *is* a "heightened" standard for . . . waiving the right to counsel, but it is not a heightened standard of *competence*.

Id. at 400-01 (internal citations omitted).[2]

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[2] In Sherwood v. State, 717 N.E.2d 313, 135 (1999), we expressed the same thought: "[w]hereas the competency inquiry focuses on the ability to understand the proceedings, the 'knowing and voluntary' inquiry focuses on whether the defendant actually understands the significance and consequences of his choice and whether the decision is uncoerced." We explicitly recognized the

C. The Trial Court's Denial of Edward's Request to Proceed Pro Se.

Faretta established that before permitting a pro se defense the trial court must inform the defendant of the "dangers and disadvantages of self-representation." 422 U.S. at 835. Although [t]here are no prescribed 'talking 'points'" that the court must convey, the court must be satisfied that waiver of counsel is "voluntary, knowing, and intelligent." Poynter v. State, 749 N.E.2d 1122, 1126 (Ind. 2001) (citing Leonard v. State, 579 N.E.2d 1294, 1296 (Ind. 1991)). Several courts have held that a defendant's conduct may effect a waiver of the right to counsel. Here, the trial court concluded that Edwards was not capable of conducting a defense and therefore could not knowingly and voluntarily waive his right to counsel.

Edwards properly asserted his Sixth Amendment right to proceed pro se. If the trial court accepts a waiver and permits a pro se defense, a record that is silent on the issue of voluntariness requires reversal. Poynter establishes that the record must establish that the defendant was cautioned as to the pitfalls of self-representation. 749 N.E.2d at 1128. At the retrial the trial court rejected Edwards's attempt to waive the right to counsel. As a result, there was no need to make a record that Edwards was informed of the risks of self-representation.[3] In short, the trial court's conclusion that

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"longstanding distinction between competence to choose self-representation, which is measured by competence to stand trial, and competence to represent oneself effectively, which the defendant is not required to demonstrate." Id.

[3] The record at Edwards's second trial includes references by the trial court to cautions given in connection with the first trial. Edwards was found competent to stand trial on July 29, 2004, and his first trial took place a year later. At the time the trial court

Edwards could not proceed pro se was based on a determination that Edwards was not competent, not that his decision was involuntary or that he was unaware of the risks of self-representation. For the reasons given below, we conclude that this ruling deprived Edwards of his Sixth Amendment right to represent himself.

At the hearing on the eve of Edwards's second trial, after Edwards again moved to proceed pro se, the trial court reviewed the psychiatric evaluations of Edwards and observed the references to "rambling writings" showing "an inability to stay focused."[4] The trial court concluded that

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denied Edwards's request to represent himself in the second trial, the court noted that at Edwards's first trial in June 2005, the court had interrogated Edwards as to the several aspects of trial and trial preparation identified in footnote five. Edwards responded that he understood that he would be responsible for these portions of the trial. The trial court did not rely on the continued validity of this exchange.

[4] The record supports these observations. For example, the following is an excerpt from a document that Edwards attached to his presentence investigation report entitled "Defendant's Version of the Instant Offense."

> The appointed motion of permissive intervention filed therein the court superior on, 6-26-01 caused a stay of action and apon [sic] it's [sic] expiration or thereafter three years the plan to establish a youth program to and for the coordination of aspects of law enforcement to prevent and reduce crime amoung [sic] young people in Indiana became a diplomatic act as under the Safe Streets Act of 1967. "A omnibuc [sic] considerate agent: I membered [sic] clients within the public and others that at/production of the courts actions showcased causes. The costs of the stay (Trial Rule 60) has a derivative property that is: my knowledged [sic] events as not unexpended [sic] to cont:act the membered [sic] clients is the commission of finding a facilitie [sic] for this plan or project to become organization of

competence to waive the right to counsel requires "more than just an understanding of the "Sherwood fifteen points."[5] In denying Edward's request to proceed pro se, the court explained:

> The easiest thing for me to have done would have been to say sure, let him defend himself, get the case done in a couple of days and not really care whether justice had been done or not. I think he last time satisfied the Sherwood points by saying he

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administrative recommendations conditioned by governors.

[5] This is apparently a reference to our discussion in Sherwood of the matters the trial court had discussed with the defendant in that case. In that case, we noted that

> Sherwood confirmed that he knew he would be solely responsible for conducting voir dire, challenging prospective jurors, making opening and closing statements, making objections and motions, making arguments, subpoenaing witnesses, and preserving issues for appeal, at both the guilt and sentencing phases. The trial court cautioned Sherwood that an attorney would be better at investigation and interrogation, that Sherwood's incarceration would be a disadvantage in preparing a defense, and that an attorney would generally have greater skills.
>
> The court further admonished Sherwood that the State would be represented by an attorney, that Sherwood could be in the awkward position of questioning himself if he chose to testify, and that Sherwood would have to abide by the same rules of evidence as an attorney. The trial court advised Sherwood against proceeding pro se. After this colloquy, Sherwood again stated that he voluntarily, knowingly and intelligently waived his right to counsel, knowing that the consequence could be death and that the State had superior resources and experience.

Sherwood, 717 N.E.2d at 136.

> understood he would be responsible for certain portions of the trial. . . . The report upon which we relied in finding that Mr. Edwards was competent was the report of Doctor Robert Sena from July 27, 2004, from Logansport, still found that there was schizophrenia of an undifferentiated type; found that Mr. Edwards acknowledged his need for counsel; found that Mr. Edwards was able to plan a legal strategy in cooperation with his attorney.

The trial court relied on Edward's schizophrenia, his admission at his first trial that he needed counsel, and the judge's own experience to determine that Edwards could not adequately defend these charges.

D. *Faretta as Binding Precedent*

The State relies on the dissenting opinions of Justices Burger and Blackmun in Faretta and the several opinions in Martinez v. Court of Appeal of California, 528 U.S. 152 (2000) as support for its position that the denial of Edwards's request for self-representation was required by due process and fundamental fairness. In Martinez, the Court held that there is no constitutional right to self-representation in an appeal. 528 U.S. at 161. In reaching this conclusion, the Court distinguished Faretta and, the State argues, thereby cast doubt on the reasoning in Faretta. Most significantly, Martinez concluded that "[t]he historical evidence relied upon by Faretta as identifying a right of self-representation is not always useful because it pertained to times when lawyers were scarce, often mistrusted, and not readily available to the average person accused of crime." 528 U.S. at 156. Thus, if a defendant could not obtain a lawyer, self-representation or no defense at all were the only options left. Id. at 158. As Martinez put it, "a government's recognition of an indigent defendant's right to represent himself was comparable to bestowing upon the homeless beggar a 'right' to take shelter in the sewers of Paris." Id.

Moreover, Martinez, observed that criminal defendants now have a constitutional right to the assistance of appointed counsel at trial. Thus, "an individual's decision to represent himself is no longer compelled by the necessity of choosing self-representation over incompetent or nonexistent representation." Id. at 158. The Martinez majority view was not shared by all of the Justices. Justice Kennedy, in a separate concurring opinion, stated that "[t]o resolve [Martinez] it is unnecessary to cast doubt upon the rationale of Faretta v. California." Id. at 164 (internal citation omitted). Justice Breyer, also concurring, stated:

> I note that judges closer to the firing line have sometimes expressed dismay about the practical consequences of [Faretta's] holding. . . . And without some strong factual basis for believing that Faretta's holding has proved counterproductive in practice, we are not in a position to reconsider the constitutional assumptions that underlie that case.

Id. at 164-65 (internal citation omitted). Finally, Justice Scalia, concurring in Martinez wrote:

> I do not share in the apparent skepticism of today's opinion concerning the judgment of the Court (often curiously described as merely the judgment of "the majority") in Faretta v. California . . . . While I might have rested the decision upon the Due Process Clause rather than the Sixth Amendment, I believe it was correct.

Id. at 165 (internal citation omitted). These separate opinions clearly acknowledge that Martinez cast doubt on Faretta. However, neither Martinez nor any other Supreme Court decision has overruled Faretta or Godinez. Indeed, Martinez made no reference to Godinez. As it stands, Supreme Court precedent from Faretta and Godinez binds us, just as it was held to be controlling by the New Jersey

Supreme Court in New Jersey v. Reddish, 859 A.2d 1173, 1189 (N.J. 2004) despite acknowledged criticism of Faretta and recognition of the Martinez concurring opinions.

We agree with the State that the trial court's conclusion that Edwards was incapable of adequate self-representation was, at a minimum, reasonable. We understand the trial court's purpose to ensure that Edwards received a fair trial, which is a fundamental requirement of due process. Ward v. State, 810 N.E.2d 1042, 1048 (Ind. 2004) (citing In re Murchison, 349 U.S. 133, 136 (1955)). However, we agree with the conclusion of the Court of Appeals that the Supreme Court of the United States has held that competency to represent oneself at trial is measured by competency to stand trial. Edwards, 854 N.E.2d at 48. Edwards was found competent to stand trial on July 29, 2004, and no party contends he was not competent to stand trial in December 2005. Similarly, as the Court of Appeals pointed out, there has been no claim by the State that Edwards's waiver of counsel was not knowing and voluntary. Here we have a determination by an experienced trial judge that Edwards was incapable of presenting a defense. That determination is necessarily based on factors better valued by, as Justice Breyer put it, "judges closer to the firing line." Martinez, 528 U.S. at 164. We have sympathy for the view that a trial could should be afforded come discretion to make that call. The record in this case presents a substantial basis to agree with the trial court and thus presents an opportunity to revisit the holdings of Faretta and Godinez, if the Supreme Court of the United States decides that is to be done. However, as it stands today, we are bound by these authorities as Supreme Court precedent. Accordingly, we hold that because Edwards was found competent to stand trial he had a constitutional right to proceed pro se and it was reversible error to deny him that right on the ground that he was incapable of presenting his defense.

Conclusion

Edwards's convictions for attempted murder and battery with a deadly weapon are reversed and this case is remanded for further proceedings. We summarily affirm the Court of Appeals as to issues not addressed in this opinion. See Appellate Rule 58(A).

Shepard, C.J., and Dickson, Sullivan, and Rucker, JJ., concur.

ATTORNEYS FOR APPELLANT

MICHAEL R. FISHER
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

STEVE CARTER
Attorney General of Indiana

JUSTIN F. ROEBEL
Deputy Attorney General
Indianapolis, Indiana

[filestamp]
FILED
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s/Kevin S. Smith
CLERK OF THE
INDIANA SUPREME COURT
COURT OF APPEALS
AND TAX COURT

IN THE
COURT OF APPEALS OF INDIANA

AHMAD EDWARDS,	)	
Appellant (Defendant below),	)	
	)	
v.	)	No.49A02-0602-CR-144
	)	
STATE OF INDIANA,	)	
Appellee (Plaintiff below).	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
Cause No. 49G05-9907-CF-121975

September 18, 2006

OPINION – FOR PUBLICATION

BAKER, Judge

Appellant-defendant Ahmad Edwards appeals from his convictions for Attempted Murder,[1] a class A felony, Battery With a Deadly Weapon,[2] a class C felony, Criminal Recklessness,[3] a class D felony, and Theft,[4] a class D felony. Edwards also argues that the trial court erred in imposing his sentences. Specifically, Edwards raises the following arguments: (1) the trial court erred in refusing to permit Edwards to represent himself in Edwards's second trial on the attempted murder and battery charges; (2) the trial court erred in denying his motions for discharge because he was denied his right to a speedy trial; (3) the trial court erred in imposing Edwards's sentences because it considered an improper aggravating circumstance; and (4) the trial court imposed sentences that are inappropriate in light of the nature of the offenses and Edwards's character.

We and the trial court alike are bound by the precedent of the United States Supreme Court. Consequently, we are compelled to conclude that the trial court erred in denying Edwards's request to represent himself in his second trial, inasmuch as it had already found him competent to stand trial. Finding no other error, we affirm in part, reverse in part, and remand with instructions to vacate Edwards's convictions for attempted murder and battery and to hold a new trial on those charges.

FACTS

On July 12, 1999, shortly after noon, Ryan Martin, a loss prevention officer at the Parisian Department Store in downtown Indianapolis, received a telephone call from a

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[1] Ind. Code §§ 35-41-5-1, 35-42-1-1.
[2] Ind. Code § 35-42-2-1.
[3] Ind. Code § 35-42-2-2.
[4] Ind. Code § 35-43-4-2

sales associate in the store's shoe department regarding a suspiciously-acting patron. Martin observed the patron, later identified as Edwards, on the store's surveillance system, and noticed Edwards place a pair of shoes into a bag and then walk out of the store.

Martin exited the store, approached Edwards on a street corner, and identified himself as a Parisian loss prevention officer. Edwards turned and appeared to be preparing to flee, so Martin grabbed Edwards in a "bear hug" and held onto him until Martin heard a gunshot. Tr. p. 98-100, 144. Martin then observed that Edwards had a gun in his hand, at which time Martin let go of Edwards and rolled away. Martin then heard a second gunshot.

At that point, Martin was on the ground with one hand on the ground and the other hand in the air to show Edwards that he was unarmed. Edwards began to walk away but then stopped, turned around, pointed the gun at Martin's head from approximately seven feet away, and fired a third shot. The bullet missed Martin and struck the lower right leg of a bystander. Martin later realized that one of the bullets had struck him, grazing his back.

After firing the third shot, Edwards ran away from the store on Washington Street. Thomas Flynn, a special agent with the Federal Bureau of Investigation, happened to be driving down Washington Street at that time. Agent Flynn heard what sounded like a large-caliber weapon being fired and observed that people on the street bore an expression that "told [him] unmistakably that something bad was occurring . . . ." Tr. p. 357. The agent then observed Edwards, who had a different expression on his face than the other people on the street, running toward him. Edwards was running between vehicles and people "seemed to be trying to get away from" him. Id. at 359. Agent Flynn exited his vehicle and chased after Edwards, following him down an alley and watching as he entered a parking garage.

Agent Flynn looked into the parking garage and observed Edwards crouching in a corner. The agent identified himself and ordered Edwards to raise his hands, observing that Edwards had a "large caliber semiautomatic handgun" in his hand. Id. at 367. Edwards pointed his gun toward the agent's face and started to move away from Agent Flynn, who was yelling constantly at Edwards to drop the gun. Edwards eventually turned and again pointed the weapon at Agent Flynn, who raised his own weapon and fired at Edwards. Edwards was struck in his thigh by the agent's bullet and fell onto the ground. Eventually, Edwards complied with Agent Flynn's order to drop the gun.

On July 15, 1999, the State charged Edwards with class A felony attempted murder, class C felony battery with a deadly weapon, class D felony criminal recklessness, and class D felony Theft. On August 16, 2000, Edwards was found incompetent to stand trial, but on March 14, 2001, Edwards was certified as competent to stand trial. On November 24, 2003, Edwards was again found incompetent to stand trial, but was certified as competent to stand trial on July 29, 2004.

A jury trial was held on June 27 and 28, 2005. The jury found Edwards guilty of theft and criminal recklessness but was unable to reach a verdict on the attempted murder and battery charges. The trial court declared a mistrial with respect to the attempted murder and battery charges and scheduled a new trial on those charges.

On August 3, 2005, Edwards moved to proceed pro se and his trial counsel moved to withdraw.[5] The trial court

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[5] Apparently, Edwards also moved to proceed pro se before his first trial began. But at the hearing prior to Edwards's second jury trial, the trial court commented that it had denied that motion because Edwards intended to raise the defense of insanity, which

granted both motions. Appellant's App. p. 54. Apparently, at some point not reflected in the Chronological Case Summary, the trial court again appointed counsel to represent Edwards. On August 31, 2005, Edwards again moved to proceed pro se, and the trial court summarily denied that motion. On December 13, 2005, Edwards filed another petition to proceed pro se, and following a hearing on the morning of Edwards's second jury trial, the trial court denied the request, finding that although Edwards was competent to stand trial he was incapable of representing himself.

On December 19-21, 2005, a second jury trial was held on the attempted murder and battery with a deadly weapon charges. The jury found Edwards guilty of both charges. On January 17, 2006, the trial court sentenced Edwards to the presumptive term on all counts-thirty years for attempted murder, four years for battery with a deadly weapon, and one and one-half years each for criminal recklessness and theft. The trial court ordered all sentences to be served concurrently, for a total executed sentence of thirty years. Edwards now appeals.

DISCUSSION AND DECISION

I. Right of Self-Representation

Edwards first argues that the trial court erred in denying his request to represent himself at his second trial. The extent of a criminal defendant's right to self-representation under the Sixth Amendment to the United States Constitution was articulated by the United States Supreme Court in Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L.Ed.2d 562 (1975); see also Sherwood v. State, 717 N.E.2d 131 (Ind. 1999) (describing and following the Faretta

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would have required a continuance. Tr. p. 3-4. Edwards does not appeal that order.

decision). The Faretta Court held that a state may not " constitutionally hale a person into its criminal courts and there force a lawyer upon him, even when he insists that he wants to conduct his own defense." 422 U.S. at 807, 95 S. Ct. 2525. More specifically, the Court noted that the Sixth Amendment grants to the accused "personally the right to make his defense." Id. at 819, 95 S. Ct. 2525. Thus, "[u]nless the accused has acquiesced in such representation, the defense presented is not the defense guaranteed him by the Constitution, for, in a very real sense, it is not *his* defense." Id. at 821, 95 S. Ct. 2525 (emphasis in original). Although a pro se defendant will lose the advantage of an attorney's training and experience and may conduct his defense to his own detriment, he has the constitutional right to do so. Id. at 834, 95 S. Ct. 2525.

More recently, the United States Supreme Court considered what, if any, difference there is between competency to stand trial and competency to represent oneself. Godinez v. Moran, 509 U.S. 389, 113 S. Ct. 2680, 125 L.Ed.2d 321 (1993). In Godinez, the Court concluded that the competency standard for waiving the right to counsel is not higher than the competency standard for standing trial. Id. at 391, 113 S. Ct. 2680. More specifically, "[t]he Court reiterated the longstanding distinction between competence to choose self-representation, which is measured by competence to stand trial, and competence to represent oneself effectively, which the defendant is not required to demonstrate." Sherwood, 717 N.E.2d at 135 (analyzing Godinez, 509 U.S. at 399-400, 113 S. Ct. 2680) (emphasis added).

The Godinez Court did, however, recognize a separate constitutional prerequisite for waiving the right to counsel- the requirement that such a waiver be knowing and voluntary. 509 U.S. at 400, 113 S. Ct. 2680. As explained by our Supreme Court,

> [w]hereas the competency inquiry focuses on the ability to understand the proceedings, the 'knowing and voluntary' inquiry focuses on whether the defendant actually understands the significance and consequences of his choice and whether the decision is uncoerced. In addition, this Court has held that the right to represent oneself must be clearly and unequivocally asserted within a reasonable time before the trial begins.
>
> Therefore, a defendant who is competent to stand trial and who knowingly, intelligently and voluntarily makes a timely and unequivocal waiver of counsel is entitled to exercise the right of self-representation . . . .

Sherwood, 717 N.E.2d at 135 (citations omitted).

Here, the trial court acknowledged Sherwood but concluded that it could carve out an exception to the rule for situations, such as this one, where the defendant was competent to stand trial but unable to represent himself:

> Well, I'm, you know, the easiest thing for me to have done would have been to say sure, let him defend himself, get the case done in a couple of days and not really care whether justice had been done or not . . . . I spent some time going over [the reports of numerous doctors who had evaluated Edwards's competency and mental health] . . . . Each and every report where a . . . neurological exam was performed found either delusions, a delusional disorder of the grandiose type or schizophrenia of an undifferentiated type . . . . Several of the reports refer to rambling writings as an indication of an inability to stay focused. The report upon which we relied in finding that Mr.

> Edwards was competent . . . still found that there was schizophrenia of an undifferentiated type; found that Mr. Edwards acknowledged his need for counsel; found that Mr. Edwards was able to plan a legal strategy in cooperation with his attorney . . . . With these findings, he's competent to stand trial but I'm not going to find he's competent to defend himself. So the request to proceed pro se will be denied.

Tr. p. 7-9. Supporting the trial court's conclusions are the reports of the doctors who examined Edwards and the voluminous pages of pro se correspondence drafted by Edwards and sent to the trial court. As an example of Edwards's correspondence, we refer to his version of the instant offenses attached to the presentence investigation report:

> The appointed motion of permissive intervention filed therein the court superior on, 6-26-01 caused a stay of action and apon [sic] it's [sic] expiration or thereafter three yeee the plan to establish a youth program to and for the coordination of aspects of law enforcement to prevent and reduce crime amoung [sic] young people in Indiana became a diplomatic act as under the Safe Streets Act of 1967, "A omnibuc [sic] considerate agent: I membered [sic] clients within the public and others that at/production of the courts actions showcased causes. The costs of the stay (Trial Rule 60) has a derivative property that is: my knowledged [sic] events as not unnexpended [sic] to contract the membered [sic] clients is the commission of finding a facilitie [sic] for this plan or project to become organization of administrative recommendations conditioned by governors.

Appellant's App. p. 646.

We are entirely sympathetic to the conclusion reached by the trial court and appreciate that it was simply trying to ensure that Edwards received a fair trial. We also acknowledge the authority cited by the State-including more recent separate opinions of a number of Justices on the United States Supreme Court-that criticizes the holdings of Faretta and Godinez. Appellee's Br. p. 8-9. But Faretta and Godinez have never been overruled, and the rules announced therein and further articulated in Sherwood leave little wiggle room. The Supreme Courts of the United States and of Indiana have pronounced that one's competency to represent oneself at trial is measured by one's competency to stand trial and that the standard for the former may not be higher than the standard for the latter.

Here, Edwards was found competent to stand trial. He made multiple timely and unequivocal requests to represent himself prior to his second trial, and there has been no suggestion that his requests were unknowing or involuntary. Consequently, it was incumbent upon the trial court to grant his request. Similarly, it is incumbent upon us to reverse Edwards's convictions for attempted murder and battery with a deadly weapon and to remand for a retrial on those charges.

We emphasize that on remand, if Edwards still desires to represent himself, the trial court must ensure that his waiver of his right to representation by counsel is both knowing and voluntary and that Edwards is made aware of the nature, extent, and importance of the right and the consequences of waiving that right. If the trial court concludes that Edwards is incapable of making a knowing and voluntary waiver and/or understanding the consequences of this waiver, it should articulate the factors causing it to arrive at that conclusion.

We will consider Edwards's arguments regarding his right to a speedy trial and the sentences imposed by the trial court only with respect to his remaining convictions for criminal recklessness and theft.

II. Speedy Trial

Edwards next argues that the trial court erred in denying his motion for discharge pursuant to Indiana Criminal Rule 4(C). In particular, he argues that he was denied his right to a speedy trial as guaranteed by the Sixth Amendment to the United States Constitution and Article I, section 12 of the Indiana Constitution.

Indiana Criminal Rule 4 establishes deadlines by which time trials must begin:

> (B) Defendant in Jail—Motion for Early Trial.
>
> (1) If any defendant held in jail on an indictment or an affidavit shall move for an early trial, he shall be discharged if not brought to trial within seventy (70) calendar days from the date of such motion, except where a continuance within said period is had on his motion, or the delay is otherwise caused by his act, or where there was not sufficient time to try him during such seventy (70) calendar days because of the congestion of the court calendar. Provided, however, that in the last-mentioned circumstance, the prosecuting attorney shall file a timely motion for continuance as set forth in subdivision (A) of this rule. Provided further that a trial court may take note of congestion or an emergency without the necessity of

> a motion, and upon so finding may order a continuance. Any continuance granted due to a congested calendar or emergency shall be reduced to an order, which order shall also set the case for trial within a reasonable time.
>
> * * *
>
> (C) Defendant Discharged. No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge, whichever is later; except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during the period because of congestion of the court calendar . . . .

Although the duty to bring the defendant to trial within one year is an affirmative one resting with the State, the time for trial is extended for delays caused by the defendant's own act or a continuance had on the defendant's own motion. Cook v. State, 810 N.E.2d 1064, 1066-67 (Ind. 2004). Furthermore, if a defendant " seeks or acquiesces in any delay which results in a later trial date, the time limitations of the rule are also extended by the length of those delays." Wooley v. State, 716 N.E.2d 919, 924 (Ind. 1999). We review a trial court's ruling on a Rule 4 motion for discharge for an abuse of discretion. Smith v. State, 802 N.E.2d 948, 951 (Ind. Ct. App. 2004).

Here, Edwards first claims that he was entitled to discharge pursuant to Rule 4(C). He moved for discharge pursuant to that rule on September 13, 2004, and November 1, 2004, and argues that the trial court erred in denying those motions. Initially, we observe that although Edwards was represented by counsel at the time, he filed both motions pro

se. Consequently, the trial court was not required to rule on or consider those motions, and, in fact, it struck the discharge motion filed on September 13, 2004. See Underwood v. State, 722 N.E.2d 828, 832 (Ind. 2000) (holding that after counsel was appointed, the defendant spoke to the court through counsel and the court was not required to respond to a pro se request of or objection by the defendant).

The pro se nature of the motions notwithstanding, we will address the merits of Edwards's argument. The State is charged with the lapse of time between July 15, 1999, and October 18, 1999—a total of 95 days—at which time the trial was continued because of a congested calendar. Subsequently, on December 8, 1999, Edwards filed a claim of incompetence and was not found competent until March 19, 2001—a period of time that is charged to Edwards. See Pettiford v. State, 619 N.E.2d 925, 927 (Ind. 1993) (holding that delays resulting from a claim of incompetence and the period of time to regain competency are not charged against the State).

After Edwards was found competent on March 19, 2001, the State is charged with the time between that date and May 16, 2001-a total of 58 days-at which time Edwards requested a continuance. The State is also charged with the days that passed between May 29, 2001, and August 1, 2001—a total of 64 days—at which time it requested that Edwards be reexamined by psychiatrists for the purpose of determining his competency. Edwards was subsequently found incompetent and was committed to a state hospital until August 4, 2004, at which time he was declared competent and returned to jail. As noted above, delays resulting from a claim of incompetence and the period of time required to regain competency are not charged against the State. Pettiford, 619 N.E.2d at 927. The State is charged with the time that passed between August 4, 2004, and November 1, 2004-a total of 89 days-the date on which Edwards filed the most recent discharge motion. As of November 1, 2004,

however, the State was only charged with a delay of 306 days. Consequently, the trial court properly denied Edwards's motion for discharge.

Furthermore, Edwards subsequently waived any claim for discharge pursuant to Rule 4(C) because he failed to object during pretrial conferences held on December 3, 2004, February 22, 2005, June 29, 2005, and September 16, 2005, when subsequent trial dates were set beyond the one-year limit. See Brown v. State, 725 N.E.2d 823, 825 (Ind. 2000) (holding that a defendant waives the right to discharge unless he objects at the earliest opportunity to a trial date outside the one-year period). Thus, Edwards is not entitled to relief under Rule 4(C).

Edwards next claims that he is entitled to relief under Rule 4(B). To invoke this rule, a defendant must maintain a position reasonably consistent with his request for a speedy trial and must object, at his earliest opportunity, to a trial setting that is beyond the seventy-day time period. Hill v. State, 777 N.E.2d 795, 798 (Ind. Ct. App. 2002). The failure at any point to maintain a consistent position with the motion constitutes an abandonment of the request and the speedy trial motion ceases to have legal viability. Sholar v. State, 626 N.E.2d 547, 549 (Ind. Ct. App. 1993).

Edwards argues that the trial court should have granted his pro se September 13, 2004, motion for discharge based upon Rule 4(B). As noted above, however, the trial court was entitled to, and did, strike this motion because Edwards was represented by counsel at that time. Even if the trial court had ruled upon it, however, Edwards was not entitled to relief. Prior to September 13, 2004, Edwards's most recent request for a speedy trial was made on May 29, 2001. In the intervening period of time, Edwards requested a continuance and failed to object to trial dates set outside the 70-day period. Consequently, Edwards was not entitled to be discharged pursuant to Rule 4(B) on September 13, 2004.

See Hill, 777 N.E.2d at 798.

III. Sentencing Arguments

A. Aggravating Factor

Edwards argues that the trial court erred in imposing his sentence for his criminal recklessness because it considered an improper aggravating factor. Specifically, he argues that the trial court erred in finding the "danger to society" caused by Edwards's actions to be an aggravator because it is an element of the crime of criminal recklessness.[6] Tr. p. 498.

Sentencing determinations are within the sound discretion of the trial court, and we will only reverse for an abuse of discretion. Krumm v. State, 793 N.E.2d 1170, 1186 (Ind. Ct. App. 2003). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.* In a sentencing statement, a trial court must identify all significant aggravating and mitigating factors, explain why such factors were found, and balance the factors in arriving at the sentence. Bryant v. State, 841 N.E.2d 1154, 1156 (Ind. 2006). A trial court may not use a material element of an offense as an aggravating factor. McCann v. State, 749 N.E.2d 1116, 1120 (Ind. 2001).

Here, the trial court imposed the presumptive[7] sentence of one and one-half years for Edwards's criminal recklessness conviction, explicitly noting that but for the "danger to society" aggravator, "a sentence well below the

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[6] Edwards does not argue that this aggravator is improper with respect to his theft conviction.

[7] Indiana's sentencing statutes were amended by P.L. 71-2005, sec. 7, with an emergency effective date of April 25, 2005, to alter "presumptive" sentences to "advisory" sentences.

presumptive would be appropriate." Tr. p. 499. It is apparent that, although it did not spell it out in so many words, the trial court intended to consider the nature and circumstances of the crime as an aggravating factor. Specifically, the trial court noted that Edwards's actions amounted to "a shootout at high noon downtown," therefore causing a "danger to society . . . ." Id. p. 498. The nature and circumstances of a crime is a proper aggravator so long as the trial court takes into consideration facts not needed to prove the elements of the offense. McCann, 749 N.E.2d at 1120. Here, Edwards opened fire on a public sidewalk in the middle of downtown Indianapolis at noon on a weekday. It is apparent that the trial court was within its discretion to consider the nature and circumstances of this crime to be an aggravating factor. Additionally, we emphasize that the trial court did not enhance Edwards's sentence; to the contrary, it imposed the presumptive term. Under these circumstances, we cannot conclude that the trial court abused its discretion in sentencing Edwards.

B. Appropriateness

Finally, Edwards argues that the sentence imposed by the trial court is inappropriate in light of the nature of the offenses and his character. Ind. Appellate Rule 7(B). Specifically, Edwards urges that we should carefully consider his long-standing history of mental illness in analyzing the appropriateness of his sentence.

Turning first to the nature of the offenses, we again observe that Edwards stole property from Parisian, opened fire in the middle of a public sidewalk in downtown Indianapolis at noon on a weekday, shot a security guard and a bystander, fled from a federal agent, and pointed a loaded gun at the agent. Edwards's actions evince a lack of concern for the safety of pedestrians and disrespect for authority.

As to the nature of Edwards's character, we note that his criminal history includes five prior adult arrests and prior convictions for operating a vehicle while intoxicated and criminal trespass. We are mindful of Edwards's history of mental illness and it is apparent from a review of the record that the trial court was also mindful of that factor. Given the nature of the offenses and Edwards's character, we cannot conclude that the trial court's imposition of concurrent presumptive sentences was inappropriate.

The judgment of the trial court is affirmed in part, reversed in part, and remanded with instructions to vacate Edwards's convictions for attempted murder and battery and to hold a new trial on those charges.

VAIDIK, J., and CRONE, J., concur.

STATE OF INDIANA VERSUS AHMAD EDWARDS

CAUSE NUMBER 49G05-9907-CF-121975

JURY TRIAL – DECEMBER 19, 20 AND 21, 2006

SENTENCING JANUARY 17, 2006

HONORABLE GRANT W. HAWKINS

MR. HOLLINGSWORTH FOR STATE

MC. MCSHANE FOR DEFENDANT

FIRST DAY OF TRIAL
DECEMBER 19, 2005

THE COURT: This is State of Indiana versus Ahmad Edwards, cause number 99-121975. Mr. Edwards is here with Mr. McShane, State by Mr. Hollingsworth. The matter comes on for trial by jury this morning. I have been advised—I'm sorry, Friday I was told, last week I was told Mr. Edwards wanted to proceed *pro se* and we would have to think about that today. I have a copy of **Sherwood** up here somewhere, so let me walk through it.

MR. MCSHANE: Wouldn't do you any good, Judge, I don't ever look at it until night.

THE COURT: I hear you. At any rate, as you are aware, Mr. Hollingsworth e-mailed me his concern, a concern he discussed with you, that there be a hearing on Mr. Edwards' request and that I not rely on the record made previously. That's where my research was leading me but I responded that I appreciated his thoughtful comments on the issue.

MR. MCSHANE: That's, that's right, Judge, and Mr. Hollingsworth and I, for the record, heard about this on Friday, he asked if I had any objection if he contacted the Court about it. I said none whatsoever and what you just stated is consistent with what he told me on Friday.

MR. HOLLINGSWORTH: We'll get you a copy of the e-mail if you'll have it.

THE COURT: I had no doubt about it; as a matter of fact, I think I printed the e-mail and put it in the file somewhere. The file's voluminous so who knows where.

MR. EDWARDS: Objection, Your Honor. Objection, Your Honor.

THE COURT: What's your objection?

MR. EDWARDS: My objection is me and my attorney actually had discussed a defense, I think prosecution had mentioned that, and we are in disagreement with it. He has a defense and I have a defense that I would like to represent or present to the Judge.

THE COURT: What does that have to do with what I've been saying so far?

MR. EDWARDS: I just wanted to make the record with that objection. This is the most present opportunity that I had. Thank you.

THE COURT: All right.

MR. EDWARDS: Thank you, Your Honor.

THE COURT: Mr. Hollingsworth, consistent with the note you sent me and that note being consistent with the conversation you and Mr. McShane had, I believe during the last trial I inquired of Mr. Edwards regarding the fifteen points mentioned in the **Sherwood** case. At that time I asked Mr. Edwards if he understood that he would be responsible for certain portions of the trial and he indicated yes. I didn't inquire into his ability to actually perform those functions

because performance, I don't think, is necessarily a criteria anymore as long as the person understands he has the obligations. The denial last time, I think, was based primarily on the fact that Mr. Edwards wanted to proceed under the defense of insanity and that that request would have caused a continuance which, which is a basis the Court can use for denying the opportunity to proceed *pro se*. Mr. McShane, does your client—if your client proceeded *pro se*, would he be seeking the invocation of that defense?

MR. MCSHANE: Let me double-check with him, if I may.

THE COURT: Okay.

DEFENSE CONFERS WITH DEFENDANT OFF THE RECORD

THE COURT: Any progress, Mr. McShane?

MR. MCSHANE: Just one more moment if I could, Judge. Thank you for the time, Your Honor. I'm always a little bit shy about getting into attorney/client matters but I would say this is a matter of a conclusion, having spoken with Mr. Edwards here. It appears to me that he does not wish to pursue the defense of insanity at trial, should he represent himself. I should state for the record I have no intention of doing that or we would have filed the appropriate documents with the court to put that specific statutory defense motion with respect to the pre-trial requirements under the Indiana competency and insanity clause. If Mr. Edwards were allowed to represent himself, and I should make it clear my position is the same as it was last week when this matter came before the Court and that is, he has an absolute right to do that, which I believe he is, and two, that it not delay the proceedings or otherwise interrupt the efficient and fair administration of justice such as requirement a continuance. What he's indicated to me is that were he to proceed to trial, representing himself, that his defense would be self-defense.

He is prepared to go forward with that defense on his own today. That is not the defense that I would be intending to advance to the jury in this case. And for the record, as his counsel, and I really haven't wavered from this since I first became familiar with this case, I believe that the defense that would be most in Mr. Edwards' interests to be advanced at trial would be basically that he didn't intend to kill anybody, not that . . .

THE COURT: Whereas he would be arguing he intended to kill but was doing so in self-defense?

MR. MCSHANE: Well, he intended to protect himself under . . .

THE COURT: Using deadly force?

MR. MCSHANE: Using deadly force.

MR. EDWARDS: Objection, Your Honor.

THE COURT: It's not time for you to object right now.

MR. EDWARDS: All right, okay.

MR. MCSHANE: So those, from my vantage point anyway, those defenses are different in the case and again, regardless of my views, I think that his right to represent himself under the Sixth Amendment of the United States Constitution and the parallel provision of the Indiana Constitution, the section of which escapes me right now, he still has an absolute right to do that as long as he doesn't run afoul of what I perceive to be the only two exceptions here, so that's our position.

THE COURT: Well, I'm, you know, the easiest thing for me to have done would have been to say sure, let him defend himself, get the case done in a couple of days and not really

care whether justice had been done or not. I think he last time satisfied the **Sherwood** points by saying he understood he would be responsible for certain portions of the trial. This time you're telling me that there would be no delay caused. I spent some time going over Doctor Richard Sena's report of July 27, 2004; Doctor Sena's report of May 28, 2004; Doctor Dwight Schuster's report of December 31st, 2002; Doctor Philip Coons's report of November 26th, 2002; Doctor Ned Masbaum's report of October 3, 2001; and Doctor Steven Berger's report of February 27, 2001; and finally Doctor Lance E. Trexler's report of February 23, 2000. Let me say that that—I think it was August of 2000 or so Judge Miller found Mr. Edwards to be incompetent, it was before I was presiding here. I think it was before Mr. Hollingsworth was assigned to this court, and we have so many reports—and this is not a complete list of the reports—we have so many reports because of findings prior to the prior, I'm sorry, reports prior to initial finding, then we have reports from a private doctor employed by the Public Defender agency, Doctor Trexler; reports from Logansport doctors; re-reports from doctors Masbaum and Schuster. Each and every report where a mental state—I'm sorry, where a neurological exam was performed found either delusions, a delusional disorder of the grandiose type or schizophrenia of an undifferentiated type, that's (inaudible) one. Several of the reports refer to rambling writings as an indication of an inability to stay focused. The report upon which we relied in finding that Mr. Edwards was competent was the report of Doctor Robert Sena from July 27, 2004, from Logansport, still found that there was schizophrenia of an undifferentiated type; found that Mr. Edwards acknowledged his need for counsel; found that Mr. Edwards was able to plan a legal strategy in cooperation with his attorney. So I'm going to carve out a third exception and if I'm wrong we'll just—if I'm wrong and there's a conviction, we'll just try this case again but I think it requires more than just an understanding of **Sherwood** fifteen points; requires more than just a plan that doesn't cause a continuance. I think it requires abilities that

exclude the doctors' findings, if you will. With these findings, he's competent to stand trial but I'm not going to find he's competent to defend himself. So the request to proceed *pro se* will be denied.

MR. EDWARDS: Objection, Your Honor.

THE COURT: Objection noted. Now are there any preliminary matters, Mr. Hollingsworth?

MR. HOLLINGSWORTH: If he's not going *pro se*, no.

THE COURT: Are there any . . .

MR. MCSHANE: I, I suppose I should probably just complete the record on this issue, Judge. I take exception to the Court's ruling. I don't believe that **Sherwood** allows for the Court to recognize the exception you just described on the record . . .

THE COURT: Actually I don't think **Sherwood** addresses that particular possibility. Tell you what, let me . . .

MR. MCSHANE: As I heard it, as I heard the Court's announcement of the ruling here, the Court's of the view that Mr. Edwards is competent to essentially cooperate with his lawyer and share in the responsibility in his defense to that extent, but not to do it on his own. I think . . .

MR. EDWARDS: Objection, Your Honor.

MR. MCSHANE: I think in discussing this issue, it does come up in **Sherwood**—excuse me, Judge.

DEFENSE COUNSEL CONFERS WITH DEFENDANT OFF THE RECORD

MR. MCSHANE: That in **Sherwood**, citing **McCaskey versus Wiggins**, a U.S. Supreme Court case from 1984, the Court indicates quote "the right to speak for one's self entails more than the opportunity to add one's voice to a cacophony of others" end quote. That's one of those five dollar words which I think is synonymous with like a chorus of others and I, I think really goes to the heart of the opportunity to represent one's self. It describes the singular nature of that right and truly, under the Bill of Rights, the personal character of that right. So I, with all due respect, would just make that statement in support of our continued position that Mr. Edwards should be able to go forward representing himself alone in this case without what he perceives to be unwarranted interference from counsel that he disagrees with, but we only have a disagreement here and I think a disagreement in and of itself is not sufficient to deny Mr. Edwards' request. He's indicated to me again, Judge, that he wishes to address the Court.

MR. HOLLINGSWORTH: May I – I'm sorry.

THE COURT: The ruling's been made. Any other preliminary issues, Mr. McShane?

MR. MCSHANE: No, Your Honor.

THE COURT: Mr. Hollingsworth?

MR. HOLLINGSWORTH: I would just like to comment on the ruling myself, for the record.

THE COURT: Okay.

MR. HOLLINGSWORTH: I actually—I've had a dilemma because as a prosecutor, although partisan here, I am also concerned the defendant gets a fair trial and reading through the medical records on the defendant, seeing his conduct in court I don't know—I agree with you, sir, I don't

know—that **Sherwood** truly addressed the issue of a seriously mentally ill defendant proceeding *pro se*. I don't know how that could be . . .

THE COURT: I'm sorry, let me interrupt, I forgot to mention, and Mr. McShane, I'm sorry, the voluminous writings shared with the Court by your client.

MR. MCSHANE: I have been provided copies of those.

THE COURT: Just keys into what some of the doctors were saying and if you'll remember, the finding of competence was conditioned by the doctors on the assistance of counsel.

MR. HOLLINGSWORTH: Yes.

THE COURT: So he's competent with counsel. Please proceed.

MR. HOLLINGSWORTH: I agree. I agree and I think, unfortunately I think justice would not be served in fairness to the defendant by his proceeding *pro se*. Clearly, his wish is not an intelligent one. Obviously this case will be scrutinized, possibly on appeal, but I think the Court has made the right decision to see that justice is done and hopefully this case will make a caveat to **Sherwood**. There's also some indication of not only mental illness but of some serious brain damage that defendant suffered about a decade ago in an automobile accident so that, I believe, has been documented. I can't recall the report. So I'm just, I'm agreeing with the Court, I think under the circumstance, justice is satisfied by him, by Your Honor's ruling. Thank you.

THE COURT: Okay.

MR. EDWARDS: Objection, Your Honor.

THE COURT: Objection is noted and from now on you have got to speak through your attorney, do you understand? We gave you a hearing on your intent, er, your desire to proceed by yourself and I've denied your request, so your attorney will speak for you from now on.

MR. EDWARDS: Well, Your Honor, I would like to address . . .

THE COURT: Yes or no, do you understand?

MR. EDWARDS: Under the First Amendment . . .

THE COURT: Do you understand?

MR. EDWARDS: Under the First Amendment I have a right to speak, Your Honor.

THE COURT: Do you understand what I said to you?

MR. EDWARDS: Your Honor . . .

THE COURT: Do you understand what I said to you?

MR. EDWARDS: Your Honor, I do understand but I would like to Constitutional right of the First Amendment . . .

THE COURT: We'll note your objection. Let's take a recess, then we'll get the jury questionnaires. In the meantime we'll take care of the rest of the morning calendar.

MR. MCSHANE: Judge, I have one more matter here.

THE COURT: Sure.

MR MCSHANE: Judge, I have one more matter here.

THE COURT: Sure.

MR. MCSHANE: I'm sorry, given what's transpired in the proceedings here, actually, I'll hold off on that.

THE COURT: Okay. If you feel the need to make a record, I'm willing to do that.

MR. MCSHANE: I don't need to right now.

THE COURT: Okay, then.

MR. MCSHANE: I, I would like to confer with Mr. Edwards here during the recess.

THE COURT: Good luck with that.

MR. MCSHANE: Yes, Judge.

[filestamp]
FILED
NOV 1, 2004
s/Doris Anne Sadler
MARION COUNTY
CLERK OF THE COURTS

MR. AHMAD	)	IN THE MARION
EDWARDS,	)	SUPERIOR
GROUPS;	)	COURT CIVIL
TURNING	)	DIVISION
POINT, PUR	)	ROOM 5
POSE, BOARD	)	49D059907CF121975
OF DIRECTORS, CAP	)	CAUSE NO.
ITAI COMMITTEE	)	
V.		
		5 Nov 04
THE STATE OF	)	DENIED
INDIANA	)	GWH

PETITION FOR HEARING

1. For hearing correspondence;

2. Substantially, Article V; IV; II§3; and 1.§§22 of the U.S. Constitution;

[Continued on Page, 2 of; 3]
[[cont-Petition for Hearing]]

3. The Groups stated above desires considerations of the court proper for legislation to intervene with the matters above limited by the U.S. Constitution.

4. Mr. Ahmad Edwards would also as an Agent Director urge the Court to consult, the best position to advise the groups of any recourse that may be available

established and to be action of law, certain of the rules admissions not to fail responsibilities of other officials, counterproductive resolved in the court system therein any action that might be construed as interference.

Continued on page; 3 of; 3

[[cont-Petition for Hearing]]

5. Therefor I sincerely regret if this petition cannot be of more direct assistance to the group upon this courts hesitation to set it's matters involving the Congress of the United States Approved Acts on June 19, 1962.

"I affirm, under penalties for perjury, that the foregoing representations are true.

s/Ahmad Edwards"
Mr. Ahmad Edwards
Director

DEFENDANT'S VERSION OF THE INSTANT OFFENSE

If you wish to make a statement concerning your conviction please do so below (this statement will be attached to the presentence report for review by the Court.)

You may use additional paper, if necessary.

If you do not wish to make a statement, write "No Statement." Please sign and date this page.

"The appointed motion of permission intervention filed therin the court superior on, 6-26-01, caused a stay of action and upon it's expiration or thereafter three years the plan to establish a youth program to and for the coordination of aspects of law enforcement to prevent and reduce crime amoung young people in Indiana became a diplomatic act, as under, The Safe Streets Act of 1962, "A omnibuc considerate agent: I membered clients within the public and others that at/production of the courts actions showcased causes. The costs of the stay [Trial Rule 60] has a derivative property that is: My knowledged events as not unexpended to contract the membered clients is the commission of finding a facilme for this plan or project to become organization of administrative recommendations ~~earry~~ conditioned by governors.

The above information is correct to the best of my knowledge.

Please sign and date this page.

Signed Name *s/Ahmad Edwards* Date 12-27-05
Printed Name Ahmad Edwards

KEY: 40 S. ALABAMA ST. INDIANAPOLIS, IN 46204	)	IN THE MARION SUPERIOR COURT CRIMINAL DIVISION
AHMAD EDWARDS V STATE OF INDIANA	)	CAUSE NO. 49G05 9907CF121975

AGENCY
FORM Ahmad Edwards

Defendant Ahmad Edwards Motion to Dismiss: TrueBill
Defendant Moves the Grounds of this Court to Dismiss this cause.

If any information of grand avoids a bill immunity proceeding at criminal information true-bill grounds

Defendant prays psalm, 15.5; for innocent of court property to be dismissed
Wherefore, so shall it be done.

Defendant affirms under perjury

Judgment
The Court, having this day made it's entry,
It is now adjuded that this cause of action is dismissed without prejudice.

Date: _____
Sandler, Clerk
Marion Circuit Court

_____
Movant, signed, placed, in U.S. Mail, 12-19-05
Public Notary *s/Brian Rodgers* (Brian Rodgers)
Comm: 1-5-06 _____
Superior Court Judge

OPPOSITION BRIEF

66

(2)

No. 07-208

FILED
SEP 13 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In the Supreme Court of the United States

STATE OF INDIANA,

Petitioner,

v.

AHMAD EDWARDS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF OHIO, ALASKA, FLORIDA, HAWAII, ILLINOIS, KANSAS, MAINE, NEVADA, NEW HAMPSHIRE, NEW MEXICO, AND UTAH AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

MARC DANN
Attorney General of Ohio

WILLIAM P. MARSHALL*
Solicitor General of Ohio
**Counsel of Record*
ELIZABETH T. SCAVO
KELLY A. BORCHERS
Assistant Solicitors
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax

Counsel for Amicus Curiae
State of Ohio

TALIS J. COLBERG
Attorney General
State of Alaska

BILL MCCOLLUM
Attorney General
State of Florida

MARK J. BENNETT
Attorney General
State of Hawaii

LISA MADIGAN
Attorney General
State of Illinois

PAUL J. MORRISON
Attorney General
State of Kansas

G. STEVEN ROWE
Attorney General
State of Maine

CATHERINE CORTEZ MASTO
Attorney General
State of Nevada

KELLY A. AYOTTE
Attorney General
State of New Hampshire

ALBERT LAMA
Attorney General
State of New Mexico

MARK L. SHURTLEFF
Attorney General
State of Utah

QUESTION PRESENTED

May a state impose a higher standard for determining whether a defendant is competent to proceed pro se than the *Dusky* standard for competency to stand trial?

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STATEMENT OF AMICI INTEREST

The Amici States have a direct interest in this case because it could determine every state's level of autonomy in developing its own standards of competency for criminal defendant self-representation. Additionally, the Amici States possess a strong interest in ensuring that pro se defendants are afforded a fair trial. Indeed, this case will impact all of the participants in the state criminal justice system, including defendants, prosecutors, judges, jurors, crime victims, and the public at large, who all share an interest in the integrity of the system.

SUMMARY OF ARGUMENT

The Amici States urge the Court to grant certiorari in this case because the issue presented is of fundamental importance: do states have the freedom to impose a higher standard for determining if a defendant is competent to proceed pro se than the minimum constitutionally required standard?

The Supreme Court's prior precedent has left open the issue of the states' flexibility in defining pro se competency standards, and lower courts have reached different conclusions. The Court recognized the right to self-representation in *Faretta v. California*, 422 U.S. 806 (1975), but did not provide detailed guidelines to states regarding the enforcement of this newly recognized right. In *Godinez v. Moran*, the Court did suggest in dicta that states have flexibility to ratchet the competency standard upward, but the Court offered no discussion on that point, and the parameters for how much a state may "elaborate" remain unclear. 509 U.S. 389, 402 (1993). Additionally, the guidelines for applying *Faretta's* self-representation right are not intuitive, given the conceptual differences between the right to representation and the right to self-representation.

The question of what competency test a state may impose before permitting a defendant's self-representation is

of fundamental legal and practical significance. The question is recurring, because defendants with mental illnesses will continue to seek to proceed pro se, and the issue is of national significance, because every state court is charged with determining defendant competency and ensuring a fair trial for each defendant. The level of state discretion in fixing pro se competency standards affects the states' ability to control their own courtrooms, which in turn ensures the dignity of the criminal justice system, the rights of the defendant, and the public perception of justice. Eliminating state discretion in this area disrupts all of these goals. It also disrupts the finality of state court judgments, because defendants who received fair trials with competent counsel may appeal on the ground that the state, wisely, refused to permit a pro se defense.

Accordingly, the Court should accept review and resolve this fundamental issue.

REASONS FOR GRANTING THE WRIT

The Court should grant Indiana's petition for certiorari review. The issue presented has been left unresolved by the Court's prior precedent, resulting in dissonant treatment among lower courts. Also, the issue is critically important, implicating the very integrity of the judicial system and the finality of state court judgments.

A. The Court has left the issue open in the past, and lower courts are in conflict.

1. The Court's precedent does not define the scope of a state's discretion to impose heightened competency standards.

Dusky v. United States sets forth the competency standard necessary for a defendant to stand trial, requiring only that a defendant have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and a "rational as well as factual

understanding of the proceedings against him." 362 U.S. 402, 402 (1960). In *Godinez v. Moran*, the Court considered what competency standard applies to defendants waiving the right to counsel and concluded that "while States are free to adopt competency standards that are more elaborate than the *Dusky* formulation, the Due Process Clause does not impose these additional requirements." 509 U.S. 389, 402 (1993). Beyond its one sentence on the subject, the Court in *Godinez* did not offer any further explanation on a state's freedom to depart from *Dusky*.

The Court did not, for example, discuss how far a state might "elaborate" on the competency standard without running afoul of the defendant's right to self-representation, or whether the state could increase the threshold competency for pro se defense without also increasing the threshold competency for standing trial, or whether the state would be free to impose higher competency standards only in certain circumstances, such as when presented with indications of a defendant's mental illness or impairment. *Godinez* thus clarifies only the constitutional floor for a state to permit waiver of counsel: States need only examine a defendant's "competence to *waive the right*, not the competence to represent himself." See 509 U.S. at 399.

But while a state *need* not ask whether a defendant is competent to perform as counsel, a state may nonetheless *wish* to frame its inquiry this way, particularly when a criminal defendant seeking to proceed pro se has a history of mental illness or other impairment. As the Court has recognized, the right to self-representation can sometimes function as a sword as much as a shield by impairing the ability of pro se defendants to raise other constitutional defenses, *Martinez v. Court of Appeal of California, Fourth Appellate District*, 528 U.S. 152, 157 n.4 (2000), and states thus justifiably may take steps to help mentally impaired defendants avoid this danger. Indeed, a state might conclude that "a defendant who is utterly incapable of conducting his

own defense cannot be considered 'competent' to make such a decision, any more than a person who chooses to leap out of a window in the belief that he can fly can be considered 'competent' to make such a choice." See *Godinez*, 509 U.S. at 416 (Blackmun, J., joined by Stevens, J., dissenting). Thus, while establishing the constitutional floor, *Godinez* leaves wide open the question of what constitutional ceiling applies to a state's freedom to impose its own more stringent competency standard.

Furthermore, *Godinez* did not address other systemic problems that arise from a pro se defense, such as inefficiency, lack of decorum, or public perceptions of unfairness. As such, *Godinez* sheds no light upon the states' ability to raise the competency standards to address these more institutional concerns.

Nor does any of the Court's other precedent clarify the constitutionally permissible ceiling on state definitions of pro se competency. The case establishing the right to self-representation, *Faretta v. California*, 422 U.S. 806 (1975), itself does not foreclose the possibility that states may conduct heightened competency inquiries. While *Faretta* makes clear that "technical legal knowledge" is "not relevant" to whether a defendant is competent to proceed pro se, the Court said nothing regarding the relevance of a defendant's objective cognitive limitations, such as mental retardation or mental illness. *Id.* at 836; see also Todd A. Pickles, Note, *People v. Welch: A Missed Opportunity to Establish a Rational Rule of Competency to Waive the Assistance of Counsel*, 34 U.S.F. L. Rev. 603, 607 (2000) (describing *Faretta* as "silent as to the test for competency to choose self-representation").

Nor did *Faretta* present an appropriate opportunity for the Court to consider the proper limits on a severely mentally ill person's right to self-representation; indeed, the colloquy recounted in the Court's opinion indicates that Faretta's

answers to the trial judge's questions were responsive, coherent, and decorous. See *Faretta*, 422 U.S. at 808 n.3. The record in *Faretta* stands in stark contrast to the record in the present case, where the defendant was diagnosed schizophrenic and twice found incompetent to stand trial, see App. 2a–3a, and submitted nonsensical motions resembling random-word-generated spam to the trial court, see App. 42a–45a. Asking whether Edwards had sufficient presence of mind to launch his own defense is a far cry from asking whether a defendant has sufficient legal training.

Indeed, the Court has already signaled that clarifying the scope of the *Faretta* right is of paramount importance. Since *Faretta*, the Court has answered several questions regarding the right to self-representation. Besides clarifying the constitutionally required competency standard in *Godinez*, the Court has determined the absence of a right to self-representation on appeal, *Martinez*, 528 U.S. at 154, and has affirmed a state trial court's discretion to allow limited participation by standby counsel that was unsolicited by the pro se defendant, *McKaskle v. Wiggins*, 465 U.S. 168, 177 (1984). And the Court has acknowledged that *Faretta* has left open other questions that have no clear answer and on which circuits have split, such as whether the right to self-representation entails a right to law library access. See *Kane v. Garcia Espitia*, 546 U.S. 9, 10 (2005). Now, the particular question triggered by *Godinez's* dicta—the extent of a state's discretion to define competency—calls out for the Court's attention and resolution.

Because the Court's prior precedent leaves this important question unanswered, certiorari review is warranted. Whatever its precise scope, it is clear that "the right to self-representation is not absolute." *Martinez*, 528 U.S. at 161. "[T]he government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." *Id.* at 162. Indeed, the entire judicial system, federal and state, has an

interest in fostering ordered and fair legal proceedings. The Amici States here ask the Court to acknowledge their authority to impose a heightened self-representation competency standard to ensure that mentally ill and mentally impaired defendants receive fair trials.

2. Conflicts exist among both state supreme courts and federal circuit courts.

The question is ripe for the Court's review. As the petition for certiorari sets forth in greater detail, the lower federal and state courts have inconsistently interpreted *Godinez*'s dicta.

The decision below, for example, conflicts squarely with the Supreme Court of Wisconsin's reading of *Godinez* as affirming the state's authority to set a higher competency standard for self-representation than for standing trial. Wisconsin prevents a defendant who falls short of that heightened standard from proceeding pro se even if he has knowingly waived counsel. See *State v. Klessig*, 564 N.W.2d 716, 722–24 (Wis. 1997). Wisconsin trial judges look to factors that may affect a defendant's actual ability to defend himself, see *id.* at 724, as opposed to merely the defendant's "competence to *choose* self-representation," see *Godinez*, 509 U.S. at 399–400. The factors Wisconsin courts consider include the defendant's literacy and fluency in English, as well as physical or psychological disabilities. See *Klessig*, 564 N.W.2d at 724. In the present case, the trial court employed a similar definition of competency and looked to similar factors, asking whether Edwards was capable of "conducting a defense," and taking account of his schizophrenia and "rambling writings." But the Indiana Supreme Court found the trial court's formulation of competency and its consideration of such factors to be disallowed by *Faretta* and *Godinez*. App. 9a–14a. See also Pet. at 12–14, 16 (surveying other state cases); compare also *State v. Day*, 661 A.2d 539, 547 (Conn. 1995) (noting

Connecticut Supreme Court's prior holding that waiver standards higher than the constitutional minimum infringe on the defendant's right to self-representation) with *State v. Hartford*, 636 P.2d 1204, 1206 (Ariz. 1981) ("The standard of competence to waive the right to counsel is higher than that required to stand trial.").

Federal circuit courts are in similar tension. The Seventh Circuit reads *Godinez* to allow heightened competency tests for counsel waiver. See *Brooks v. McCaughtry*, 380 F.3d 1009 (7th Cir. 2004). The Ninth Circuit, in contrast, has opined that *Godinez* mandates a single competency test, and therefore a finding of competence to waive counsel necessarily entails competence for all other purposes. See *United States v. Hernandez*, 203 F.3d 614, 620 n.8 (9th Cir. 2000). See also Pet. at 13, 15–16 (surveying other federal cases).

The Court should grant certiorari review to resolve the confusion in the lower courts.

B. Whether states have the freedom to enhance the competency standard required for defendants requesting to proceed pro se is of great importance.

1. The issue confronts a frequently recurring problem of national scope.

The question of the constitutional limits on states' control over competency standards is necessarily a question that affects every state. Moreover, the question of how to treat pro se defendants, and, in particular, mentally ill pro se defendants, arises with some frequency. The Court should take up the issue to resolve this question that will continue to resurface across the country.

The number of pro se criminal litigants has increased in the past years. "Once mostly the practice of political dissidents or lawyer haters, self-representation in court has gone mainstream." Laura Parker & Gary Fields, *Do-It-*

Yourself Law Hits Courts, USA Today, Jan. 22, 1999, at 3A; accord Marie Higgins Williams, Comment, *The Pro Se Criminal Defendant, Standby Counsel, and the Judge: A Proposal for Better-Defined Roles*, 71 U. Colo. L. Rev. 789, 815 (2000). Although self-representation is more common in the civil context, recent years have seen a rise in pro se criminal defendants as well. See Sarah Livingston Allen, Note, *Faretta: Self-Representation, or Legal-Misrepresentation?*, 90 Iowa L. Rev. 1553, 1572 n.122 (2005). In one study of pro se defendants that analyzed the Federal Court Database, State Court Database, and Federal Docketing Database, an estimated .3 % to .5 % of felony defendants choose self-representation. See Erica J. Hashimoto, *Defending the Right of Self-Representation: An Empirical Look at the Pro Se Felony Defendant*, 85 N.C. L. Rev. 423, 447 (2007).

Criminal defendants seeking to proceed pro se will often suffer from mental illness. To be sure, some pro se defendants are simply eccentric. See *id.* at 455, 473 (citing reasons people choose to proceed pro se, such as to use the trial to make a political point). But the case law is replete with examples of defendants with serious mental illness requesting permission to represent themselves. See, e.g., *Godinez v. Moran*, 509 U.S. 389, 409–10 (Blackmun, J., joined by Stevens, J., dissenting) (noting psychiatric evaluation of defendant as severely depressed and defendant's own affirmation that he was on psychiatric medication); *United States v. Frazier-El*, 204 F.3d 553, 556–57 (4th Cir. 2000) (describing paranoid schizophrenia of defendant seeking to dismiss counsel); *People v. Lego*, 660 N.E.2d 971, 979 (Ill. 1995). And the National Mental Health Association estimates that up to 10 % of the more than 3500 death row inmates nationwide suffer from mental illness. See Howard Witt, *Inmate Granted Stay*, Chi. Trib., Feb. 5, 2004, at 16.

The frequency with which criminal defendants pursue their own defenses, and the recent evidence that truly mentally impaired defendants are blundering through their own trials unaided, should prompt the Court to re-examine and to clarify the practical limits that constitutionally may be imposed upon the right recognized in *Faretta*. *Cf. Martinez*, 528 U.S. at 164 (Breyer, J., concurring) (noting the need for "empirical research . . . [to] help determine whether, in general, the right to represent oneself furthers, or inhibits, the Constitution's basic guarantee of fairness.").

2. The issue directly affects the integrity of the judicial system.

To protect the integrity of the criminal justice system, the states must have flexibility to shape competency standards that respond to the very real practical concerns that arise in many pro se defendants' trials. "[D]efendants who choose to represent themselves may be inept to do so, may intend only to delay their trial, or may make a mockery of the legal system." Williams, *supra*, at 792. Permitting mentally ill defendants to launch their own defenses threatens the rights of defendants, the efficiency and decorum of the courtroom, the impartiality of the judge and jury, and the public perception of fairness.

Defining the self-representation competency standard not only affects the right to self-representation, but also reaches other rights of equal importance. When a petitioner invokes his constitutional right to self-representation, he necessarily waives his constitutional right to counsel. See *King v. Bobby*, 433 F.3d 483, 490 (6th Cir. 2006). But the right to counsel is considered of paramount importance because "it affects [the defendant's] ability to assert any other rights he may have." *Fields v. Murray*, 49 F.3d 1024, 1028 (4th Cir. 1995) (citing *Penson v. Ohio*, 488 U.S. 75, 84 (1988)). Indeed, the Court has recognized that the "right" to self-representation can sometimes function as a sword rather

than a shield, when cited as a "predicate for upholding the waiver of an[other] important right." See *Martinez*, 528 U.S. at 157 & n.4. If the right to self-representation is defined too robustly, it threatens the meaningful exercise of the right to counsel, to a fair trial, to cross-examine witnesses, and to remain silent, see *Taylor v. Hopper*, 596 F.2d 1284, 1291 (5th Cir. 1979), and general concerns regarding substantive and procedural due process arise, see *Lagway v. Dallman*, 806 F. Supp. 1322 (N.D. Ohio 1992).

In light of the pitfalls that await a pro se defendant, the skills needed to launch a meaningful pro se defense are far greater than the skills needed to communicate meaningfully with counsel. Just because a defendant can communicate his story to a trained lawyer with whom he enjoys a privilege of confidentiality does not mean the defendant can communicate with a judge or jury. And stepping into the shoes of his counsel requires tactical decision-making that may be beyond the defendant's mental capacity. A defendant may be able to explain to counsel his perception of events, but may be incapable of identifying or raising constitutional objections or understanding how to best further his legal positions. In short, "[c]ompetency for one purpose does not necessarily translate to competency for another purpose." *Godinez*, 509 U.S. at 413 (Blackmun, J., joined by Stevens, J., dissenting).

Because of these reasons, states may wish to ensure that pro se defendants possess not merely the competence to interact with an attorney, but rather the minimal competence to present their own coherent defense. The ordinary test for competence, asking whether a defendant is capable of consulting with counsel to assist in preparing his defense, see *Dusky*, 362 U.S. at 402, is an imperfect tool for testing the competence of one who plans to proceed *without* counsel. As Justice Blackmun noted, "[t]he reliability or even relevance of such a finding vanishes when its basic premise—that counsel will be present—ceases to exist." See *Godinez*, 509

U.S. at 413 (Blackmun, J., joined by Stevens, J., dissenting). Accordingly, although the *Dusky* test may be all that the constitution requires, see *Godinez*, 509 U.S. at 402, a state may reasonably conclude that prudence requires more.

Indeed, courts and scholars alike have expressed concern over the lack of protection for mentally ill defendants who elect to proceed pro se. "Some critics argue that the right to proceed pro se at trial in certain cases is akin to allowing the defendant to waive his right to a fair trial." *Martinez*, 528 U.S. at 161 n.9 (citing concurring opinion in *United States v. Farhad*, 190 F.3d 1097, 1106–07 (9th Cir. 1999)). One author has suggested that the "misguided unitary standard of competency . . . ignores the reality of criminal defendants with deeply impaired mental capabilities." See Pickles, supra, at 631. Another has concluded that "[f]or a mentally impaired defendant who seeks to act as his own attorney, . . . the current competency evaluation system is inadequate to protect his rights." Jennifer W. Corinis, Note, *A Reasoned Standard for Competency to Waive Counsel after* Godinez v. Moran, 80 B.U. L. Rev. 265, 267 (2000).

Moreover, a state's ability to ensure the fairness and orderliness of criminal trials benefits not only the defendant himself. Rather, by ensuring pro se defendants have at least a minimal capacity to present their own defense, state courts preserve integrity within the courtroom and the impartiality of the judge and jury, and thus serve the interests of all participants in the criminal justice system, including the prosecutor, judge, jury, victim's family, and public at large.

A judge faced with a mentally impaired pro se defendant may feel obliged to walk a defendant through the presentation of his case in order to prevent a trial's progress from derailing entirely. See *Taylor v. Hopper*, 596 F.2d 1284, 1291–92 (5th Cir. 1979) (stating that "the trial court announced in Taylor's presence that it would relax the usual rules and would give Taylor as much leeway 'as I can' and

would probably allow him to violate some rules in instances which would not be permitted if he were represented by counsel"). A judge may even feel obliged to call and question witnesses herself. See *McKaskle*, 465 U.S. at 177 n.7; cf. *Wheat v. United States*, 486 U.S. 153, 160 (1988) (stating trial courts possess responsibility to ensure fairness within trials).

While such involvement may ensure a minimal degree of efficiency and order to an otherwise chaotic courtroom, a judge's active participation in the development of a pro se defendant's case compromises her role as impartial jurist—a linchpin in our adversary system. As one commentator has explained:

> This impartiality is important for several reasons. It is important that the jury see the impartial nature of justice, in which they are being asked to participate. It is important that the judge avoid the conflicts of interest that may arise if he is supposed to make decisions neutrally while simultaneously informing the defendant of the law. And finally, it is important that the defendant and the prosecuting attorney both have an impartial tribunal before which they can present their cases.

Williams, *supra*, at 806. By bending procedural rules to allow the defendant to present his case, the judge runs the risk of offending other rights or privileges afforded to both the prosecution and the defense, or even giving the jury the impression that she is in favor of the defense.

A jury's impartiality may also often be compromised by the prejudicial effect of a mentally ill defendant's incoherent defense. A jury may easily become confused by or even biased against a pro se defendant attempting to convey his defense. For example, in a Texas murder case, *State v. Panetti*, the jurors became skeptical and fearful of the

mentally ill defendant, who paraded around the courtroom wearing an old-style Western purple cowboy costume and flipped coins to make decisions. See Jessica McBride, *How Can an Insane Man Defend Himself?*, Milwaukee J. Sentinel, Feb. 15, 2004, at J1. Thus, in such cases, although mental illness is typically considered a mitigating factor, it may become an aggravating factor because the jury views the mentally incompetent defendant as dangerous. *Id.* Even when a mentally ill defendant is not threatening, his defense may be compromised when he proceeds pro se. The jurors may think that the defendant is "putting on a show" instead of actually partaking in a serious legal proceeding. See Ralph Blumenthal, *Insanity Issue Lingers as Texas Execution Is Set*, N.Y. Times, Feb. 4, 2004, at A12. Thus, not only can jurors become confused regarding the actual legal arguments presented by a pro se defendant who acts in an incoherent and extremely bizarre manner, but they can also lose sight of the seriousness of the proceedings. Alternatively, the jury may become biased in the other direction: The prospect of "try[ing], convict[ing], and punish[ing] one so helpless to defend himself," see *Godinez*, 509 U.S. at 417 (Blackmun, J., joined by Stevens, J., dissenting), may play upon the jurors' sympathies to such a degree that they become inclined to acquit without regard for the real question of guilt. In either scenario, the defendant's performance becomes a form of improper extraneous evidence influencing the jury's decision, and a fair verdict is compromised.

Finally, "courts have an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them." *Wheat v. United States*, 486 U.S. 153, 160 (1988). Courts have noted the unavoidable problems with trial efficiency and respect for the courtroom when defendants decide to represent themselves. One district court, in holding that it is improper to deny a defendant the right of self-representation solely to ensure an orderly and

efficient trial, observed that "a measure of unorthodoxy, confusion and delay is likely, perhaps inevitable, in pro se cases." *United States v. Dougherty*, 473 F.2d 1113, 1124–26 (D.C. Cir. 1972). But when a pro se defendant suffers from a serious mental illness, mere unorthodoxy and confusion can quickly transform into chaos. Allowing states to screen out truly mentally unstable defendants from proceeding pro se permits states to maintain dignity in their courts of law.

When a defendant with a severe mental illness is permitted to proceed pro se, instead of the public viewing the allowance as a strengthened affirmation of the defendant's right to self-representation, people may perceive the trial as an abomination of the defendant's rights, most offensively of a citizen's right to a fair trial. Oftentimes national media attention focuses on the most egregious cases of the mentally ill representing themselves, shattering the public's confidence in its own justice system. See Witt, *supra*, at 16. For example, a few years ago, the press quoted Dr. F.E. Seale, a psychiatrist who treated a schizophrenic, bipolar patient and then later observed part of his patient's pro se defense, as asking, "[H]ow in the world can our legal system allow an insane man to defend himself?" See *id.* In the interest of maintaining the appearance of a fair trial, states must be free to exercise their discretion to raise the competency test for pro se criminal defendants.

3. The issue affects states' important interest in protecting the finality of their judgments.

States also have a strong interest in the finality of their judgments, and this interest is threatened in the absence of the Court recognizing a state's clear right to impose its own competency standard.

In many cases, a defendant succeeds in persuading a trial court to allow him to proceed without counsel against his better interests, only to challenge his conviction on appeal

on the basis of deprivation of counsel. See, e.g., *United States v. Ellerbe*, 372 F.3d 462, 466 (D.C. Cir. 2004); *United States v. Mitchell*, 788 F.2d 1232, 1234–35 (7th Cir. 1986); *Dunn v. Johnson*, 162 F.3d 302, 307–08 (5th Cir. 1998); *State v. Jordan*, 804 N.E.2d 1, 6–9 (Ohio 2004). Sometimes the defendant meets with success in obtaining a reversal. See, e.g., *Schafer v. Bowersox*, 329 F.3d 637, 650–51 (8th Cir. 2003); *Lego*, 660 N.E.2d at 979.

To avoid such a result, and to preserve the finality of its judgments, a state court might reasonably seek to err on the side of safeguarding a defendant's right to counsel. But when states are given no flexibility to impose a higher standard than the *Godinez* baseline, convictions become vulnerable to attack from the other direction: Mentally ill defendants, such as the Respondent, might successfully overturn their convictions upon a state trial court's *refusal* to allow waiver of the defendant's fundamental right to counsel.

A trial judge ruling on a defendant's request for self-representation thus faces a "peculiar problem." *Fields*, 49 F.3d at 1028. A judge evaluating a defendant's request to proceed pro se must "'traverse . . . a thin line' between improperly allowing the defendant to proceed pro se, thereby violating his right to counsel, and improperly having the defendant proceed with counsel, thereby violating his right to self-representation." *Id.* at 1029 (citing *Cross v. United States*, 893 F.2d 1287, 1290 (11th Cir. 1990)). The Tenth Circuit has noted the "'cat and mouse' game" played by the defendant who can appeal under his right to counsel if his request for self-representation is granted at the trial, and can appeal under his right to self-representation if his request is denied. *United States v. Treff*, 924 F.2d 975, 979 (10th Cir. 1991).

Of course, the tension between a defendant's right to counsel and a defendant's right to self-representation will be present in any case. But when a pro se defendant suffers from

a serious mental impairment, the delicate balance becomes even more difficult for a judge to strike. And a mentally impaired pro se defendant, in electing to proceed pro se, is far more likely to unwittingly sabotage her other procedural rights as well. The states legitimately protect the finality of their judgments when they err on the side of ensuring defendants receive proper assistance of counsel. The Court should permit states this breathing room to protect their defendants' rights.

CONCLUSION

For all of the above reasons, the Court should grant Indiana's petition and reverse the Indiana Supreme Court's decision.

Respectfully submitted,

MARC DANN
Attorney General of Ohio

WILLIAM P. MARSHALL*
Solicitor General of Ohio
**Counsel of Record*
ELIZABETH T. SCAVO
KELLY A. BORCHERS
Assistant Solicitors
30 East Broad Street
17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax

Counsel for Amicus Curiae
State of Ohio

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REPLY BRIEF

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v.

AHMAD EDWARDS,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Indiana

REPLY IN SUPPORT OF THE PETITION

Office of the Indiana
Attorney General
IGC South, Fifth Floor
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-6255

**Counsel of Record*

STEVE CARTER
Attorney General
THOMAS M. FISHER*
Solicitor General
JULIE A. BRUBAKER
JUSTIN F. ROEBEL
Deputy Attorneys General

Counsel for Petitioner

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REPLY BRIEF FOR PETITIONER

I. Robust and Intractable National Lower Court Conflict Warrants Review

1. In its Petition, the State demonstrated that *Godinez v. Moran*, 509 U.S. 389 (1993), has created judicial conflict and confusion, which must be resolved by this Court. Pet. 11-18. While Respondent Ahmad Edwards unconvincingly attempts to minimize the extent of this conflict and confusion, he acknowledges that it exists.

Specifically, many lower courts—including the Indiana Supreme Court in this case—have concluded they are required by *Faretta v. California*, 422 U.S. 806 (1975), and *Godinez* to apply the *Dusky v. United States*, 362 U.S. 402 (1960), competence-to-stand-trial standard to determinations of competence for self-representation. Pet. 15-17. This can result in great inequities where a mentally impaired defendant would be permitted to present a farcical defense. The justice system is disserved and fundamental fairness is foregone when mentally ill but competent defendants represent themselves.

However, some courts, including the supreme courts of Maryland, Wisconsin, Utah, and Wyoming as well as the Seventh Circuit, have read *Godinez* as allowing States to impose a higher standard for competency with respect to self-representation. *See Brooks v. McCaughtry*, 380 F.3d 1009, 1013 (7th Cir. 2004) (holding that Wisconsin's higher standard for competency for self-representation does not "violate[] the rule of *Godinez*"); *Gregg v. State*, 833 A.2d 1040, 1060 (Md. 2003) ("Although the Supreme Court has

found that the states are free to adopt a higher standard for assessing competency to waive counsel than required by the federal Due Process Clause, Maryland has not done so . . . .") (internal citations omitted); *State v. Arguelles*, 63 P.3d 731, 751 (Utah 2003) (holding that the "minimum requirements for competency to waive assistance of counsel are no greater than the requirements for competency to stand trial," but acknowledging that "[s]ome states have established additional requirements for competency to waive counsel"); *State v. Klessig*, 564 N.W.2d 716, 724 (Wis. 1997) ("In Wisconsin, there is a higher standard for determining whether a defendant is competent to represent oneself than for determining whether a defendant is competent to stand trial. The higher standard is not based on the requirements of the Sixth Amendment, but stems from the independent adoption of the higher standard by the State as allowed under *Godinez*."); *Hauck v. State*, 36 P.3d 597, 602 (Wyo. 2001) (holding that "*Godinez* does represent the very minimum that the standard could be" for self-representation, but acknowledging that the state constitution might offer additional protections). This interpretation allows courts to avoid unjust trials where a defendant is competent under *Dusky*, but incapable of presenting any meaningful defense.

Edwards attempts to minimize the conflict by discounting cases from every jurisdiction, except Wisconsin, because the courts in those jurisdictions have not articulated a standard for competence to waive counsel. Edwards' Br. 12 ("In *none* of the many other cases petitioner collects did a court hold that a defendant who was competent to stand trial . . . was not competent to exercise the constitutional

right to self-representation—as a matter of either state or federal law."). However, Edwards does not, and cannot, deny that all of these courts explicitly recognized that States may impose a higher standard of competency for self-representation. Just because those courts have not taken the next step in defining the standard for competency to self-represent does not mean that the conflict does not exist. In fact, it underscores the confusion and uncertainty that prevails. Many courts are willing to acknowledge that States may impose a higher standard, but have been hesitant to do so. The courts' hesitance stems from the lack of guidance as to the proper balance between the defendant's right to self-representation and the State's interests in providing a fair trial. This Court's guidance is necessary to clear up this confusion.

2. Edwards admits that Wisconsin imposes a higher standard for competency to represent oneself. Edwards' Br. 11-12. Yet, he argues that, even under the Wisconsin standard, "[i]t is unclear . . . if even the Wisconsin courts would deny Edwards his right to represent himself." Edwards' Br. 11-12. Quite to the contrary, the Wisconsin standard seems designed to protect defendants very much like Edwards. It tests "the defendant's education, literacy, fluency in English, and any physical or psychological disability which may significantly affect his ability to communicate a possible defense to the jury" and demands a record that demonstrates "an identifiable problem or disability that may prevent [the] defendant from making a meaningful defense." *State v. Marquardt*, 705 N.W.2d 878, 891-92 (Wis. 2005). Edwards has little education (Ed.App. 633), his literacy is questionable (Ed.App.

99-103, 125, 153-66, 188-223, 252-81, 289-348, 419-34, 458-91, 553-68, 620-31, 646), and he most definitely suffers from a psychological disability that would affect his ability to communicate with a jury. (Ed.App. 149) (describing Edwards' thought process as "extremely tangential," and noting that he "decompensates in the course of a conversation"). On the record in this case, there can be little doubt that, using the Wisconsin standard, Judge Hawkins would have found "an identifiable problem or disability that may prevent" Edwards "from making a meaningful defense." *Marquardt*, 705 N.W.2d at 892.

Regardless, in light of the highly fact-bound nature of the Wisconsin test, Edwards' contention to the contrary hardly diminishes the need for Supreme Court review. The concern is that Wisconsin employs such a test at all, while Indiana and several other States do not. Without guidance from this Court as to what greater protections may be constitutionally valid, state courts will continue to yield results that that may have turned out differently elsewhere based on different understandings of the Sixth Amendment.

II. Edwards' Proposed Solutions Merely Mask Underlying Incompetence Problems or Force States to Choose Between Trying Defendants and Allowing Them to Represent Themselves

Edwards recognizes that some defendants who are competent to stand trial should not be allowed to represent themselves at trial. Edwards' Br. 31-32. Indeed, he ultimately embraces the notion of

protecting "vulnerable defendants (and systemic interests)" from the circus-like atmosphere that can prevail where a mentally disabled defendant attempts to represent himself. Edwards' Br. 33. He just prefers that trial courts be more tactful and employ higher standards for self-representation through the vehicle of asking whether the defendant has made a "knowing and voluntary waiver." Edwards' Br. 33-34.

Some courts have followed this course and attempted to avoid failures of justice by intermingling the competency determination with the knowing-and-voluntary-waiver inquiry. *See State v. Thomas*, 794 A.2d 990, 994 (R.I. 2002) (holding that there is a "heightened standard of competency when [a defendant] attempts to waive counsel," but setting forth a heightened analysis of whether the defendant's waiver of counsel was knowing and voluntary); *People v. Lego*, 660 N.E.2d 971, 979 (Ill. 1995) ("If by virtue of delusion occasioned by mental illness a defendant believes falsely that his legal skills equal or exceed those of virtually any attorney who might represent him, he can hardly be said to be aware of the dangers and disadvantages of self-representation or to know what he is doing and to be making his choice with eyes open.").

However, this solution is untenable. Asking whether a defendant knows that he is waiving his right to counsel and is doing so voluntarily does not address whether the defendant can communicate in any minimal way with a jury. A strict application of the knowing-and-voluntary-waiver requirement provides no protection to defendants, such as

Edwards, who meet the minimal requirements of *Dusky*, but are unable to mount a coherent defense.

Moreover, even if the knowing-and-voluntary inquiry has properly metamorphosed into a *de facto* competence review, this Court should still grant certiorari. It is far better to be up front about this change and give guidance as to what can properly be considered in the knowing-and-voluntary-waiver determination. Moreover, if the knowing-and-voluntary-waiver standard is heightened for Sixth Amendment waiver of counsel, this Court must ensure that this heightened standard does not bleed into the knowing-and-voluntary-waiver analysis for other constitutional rights.

Edwards' other suggested alternative—to deny the defendant a trial altogether—is rather astounding. Edwards' Br. 31. Edwards posits that the State was not required to bring him to trial upon a finding of competency. Edwards' Br. 31 ("[P]etitioner obviously could have avoided any difficulties posed by self-representation in this case simply by declining to try a defendant who . . . possessed only 'borderline legal competency.'") However, the State is not free to delay trials indefinitely. The Sixth Amendment requires that States give defendants a speedy trial, which obligates States to try competent defendants within a reasonable period. *See Barker v. Wingo*, 407 U.S. 514, 530 (1972).

Edwards does not make clear which remaining bad alternative he would prefer the State to follow. He surely cannot be suggesting that the State simply release suspected criminals who cannot satisfy a

more broadly heightened competency standard. But the State's only remaining recourse for protecting both society and constitutionally competent but mentally impaired defendants would be to institute civil commitment proceedings. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("[A] person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant "); *see also* Ind. Code § 12-26-7-1 *et seq.*

Surely, it is preferable for the State to foist counsel upon a mentally impaired but constitutionally competent defendant rather than to commit him in an institution indefinitely.

III. This Case is an Excellent Vehicle for Review

A. The State has consistently argued that denial of self-representation here is consistent with Sixth Amendment rights

Edwards complains that the State has been inconsistent in its arguments about what *Godinez* permits. Edwards' Br. 23-26. However, the central issue in this case has always been what is permitted by the *Sixth Amendment*, not *Godinez* or *Faretta*. In

the briefs before the Indiana Supreme Court and the Indiana Court of Appeals, the State argued that fundamental fairness requires consideration of a defendant's ability to present a defense. *See* State's Ind. C.A. Br. 7, State's Pet. to Transfer 5-7. Thus, the underlying question has always been whether providing additional protections would violate the Sixth Amendment.

Following the Indiana Supreme Court's decision below, in evaluating whether this case is suitable for consideration by this Court, the State discovered that the "free to adopt" language from *Godinez* had created judicial disarray regarding whether the Sixth Amendment permits additional protections. *See Godinez v. Moran*, 509 U.S. 389, 402 (1993). The presentation of this conflict is not a new issue, but instead shows that other jurisdictions are also grappling with the limitations of present Sixth Amendment self-representation doctrine.

Furthermore, it would have been artificial and contrived for the State to have argued to the Indiana appellate courts that Edwards should have been afforded additional protections under state law, as *Godinez* arguably permits. This was not the basis of the trial court's denial of self-representation. App. 36a-37a. Instead, the trial court's denial was based on *Sherwood v. State*, 717 N.E.2d 131, 135 (Ind. 1999), where the Indiana Supreme Court interpreted *Godinez* as requiring "that the competency standard for waiving the right to counsel may be not be higher than the competency standard for standing trial." The trial judge found that a third, novel determination was necessary for self-representation, in addition to determining competency and whether the

waiver was voluntary and knowing. App. 36a ("I'm going to carve out a third exception [to the right of self-representation], and if I'm wrong . . . and there's a conviction, we'll just try this case again . . . .").

Moreover, even if the trial court had been aware of the "free to adopt" language in *Godinez*, it still would have had to fabricate, ad hoc, proposed new protections because (as discussed in Part I, *supra*) it is unclear what greater protections are constitutionally permissible. Therefore, the central question on appeal would still have been what protections the Sixth Amendment permits. Because of the existing judicial disarray, only this Court can answer that question.

B. The unremarkable prospect of remanding the case after a ruling for the State does not create a vehicle problem

This Court should not deny certiorari merely because remand may ultimately be necessary. Edwards' Br. 26 n.9. Under the self-representation doctrine as is currently exists, *any* case would present the same procedural requirement because a ruling in favor of the State would likely announce a new standard that a trial court would not have known to apply.

For the same reason, Judge Hawkins cannot be faulted for his ad hoc approach in this case. The trial court did not attempt to lay out criteria for additional protections, but instead only found that self-representation "requires abilities" above and beyond the "doctors' findings" of ability to assist in

his defense. App. 36a-37a. It makes no difference whether the trial court attempted to discern any other proper criteria. With the doctrine in as much disarray as it is, it would only be happenstance if plenary review affirmed the exact criteria employed by a trial judge to gauge competence for self-representation.

Edwards' attempt to infuse a lingering state-law claim is irrelevant. Edwards' Br. 26 n.9. The Indiana Supreme Court clearly ruled based on the federal Constitution. App. 4a n.1 (refusing to address whether Edwards had a right to proceed *pro se* under the Indiana Constitution because federal law was binding). Edwards makes no credible argument that there is an adequate and independent state-law ground for the court's decision.

C. The richly detailed record shows Edwards could functionally assist his lawyer but not speak for himself

The present record amply shows that Edwards was incapable of self-representation at the time of trial, despite meeting the *Dusky* requirements. In denying self-representation, the trial court relied on the same doctors' examinations that established Edwards' competency to stand trial. App. 36a. Those examinations found continued "schizophrenia of an undifferentiated type." App. 36a. The court also observed that "[e]ach and every" prior neurological examination "found either delusions, a delusional disorder of the grandiose type or schizophrenia of an undifferentiated type." App. 36a.

Also, Edwards' correspondence and pleadings to the court following the finding of competency to stand trial demonstrated continued confusion, delusions, and an inability to present cogent thoughts. (Ed.App. 484-85, 487-89, 543-45, 547, 558). On December 15, 2005, only four days prior to the trial, Edwards wrote one among many incomprehensible letters to the judge, which stated, in part:

> TRY TO DO YOUR BEST OLD MAN TO ISOLATE THE YOUNG BOY IN ME AT THIS. THE DEFENCE HELPS ME FACE MY LODGE FOR OUR 35TH DEGREE WE CALL IT THE PASSING OF THE HANDS TO THE THUMB. AND IT IS VERY IMPORTANT TO ME TO WORK AGAIN FOR MY FAMILY LODGE.

(Ed.App. 571). However, other filings illustrate that Edwards had at least a basic understanding of the proceedings and could assist his counsel. (Ed.App. 460-64, 474-76, 559-62, 566-67).

Contrary to Edwards' contention that he was completely lucid by the time of trial, the record plainly demonstrates that his mental problems continued. Eight days after the final denial of his *pro se* requests and five days after he was convicted by the jury, Edwards submitted a document as part of the presentence investigation entitled "DEFENDANT'S VERSION OF THE INSTANT OFFENSE." App. 44a. ("The costs of the stay [Trial Rule 60] has a derivative property that is: My knowledged events as not unexpended to contract the membered clients is the commission of finding facilme for this plan or

project to become organization of administrative recommendations ~~carry~~ conditioned by governors."). This document plainly exhibits Edwards' continued inability to present cogent statements.

Furthermore, it is not significant that on August 3, 2005, approximately four months before trial, the trial court granted Edwards permission to proceed *pro se*. (Ed.App. 54, 540). His *pro se* representation lasted only through one pre-trial conference on August 30, 2005. (Ed.App. 54-56). At that conference, Edwards appeared with stand-by counsel and, the very next day, the court denied a request for continued self-representation. (Ed.App. 56-57). During this short period of self-representation, Edwards filed a petition in the trial court asserting claims against the Logansport State Hospital, including the following claim:

> DEFENDANTS DAMAGE IS MITIGATOR BALLISTICS SHAVE DONALD RUMSFELD INSTRUMENT DISCOUNT RATES AT THE SERIOUSNESS OF EUROPEAN UNIONS VAID AT WAR FREE TO UTILIZE COMPELLED LEX TO AND PLEADING ARGUMENT OF RESPONSIBILITY ABSENCE OF A DAY WITHIN A FULL YEAR OF CORROBORATION THE PLAINTIFF CLASS ACCEPTANCE OF A PRAGMATISM RESULT DEVIATE IN CONDUCT AS POSSIBLE/PROPERLY RECORD. RELIEF.

(Ed.App. 543).

Sadly, it appears that even during this short period of self-representation, Edwards was incapable of communicating with the court. While the record indicates that Edwards had the basic understanding of the proceedings and could aid in his defense, as required by the *Dusky* standard, he clearly was not capable of communicating with the judge or a jury or otherwise presenting any meaningful form of self-representation.

CONCLUSION

The Petition should be granted.

Respectfully submitted,

STEVE CARTER
Attorney General
THOMAS M. FISHER*
Solicitor General
JULIE A. BRUBAKER
JUSTIN F. ROEBEL
Deputy Attorneys General

Office of the Indiana
Attorney General
IGC South, Fifth Floor
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-6255

**Counsel of Record*

Counsel for Petitioner

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AMICUS CURIAE BRIEF

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v.

AHMAD EDWARDS,

Respondent.

On Writ of Certiorari
to the Supreme Court of Indiana

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

Of Counsel:
WILLIAM F. SHEEHAN
GOODWIN PROCTER LLP
901 New York Ave., N.W.
Washington, D.C. 20001
(202) 346-4000

BARBARA BERGMAN
CO-CHAIR, AMICUS COMMITTEE
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
1117 Stanford, N.E.
Albuquerque, NM 87131
(505) 277-3304

KEVIN P. MARTIN
Counsel of Record
ABIGAIL K. HEMANI
DAHLIA S. FETOUH
GOODWIN PROCTER LLP
Exchange Place
53 State Street
Boston, MA 02109
(617) 570-1000

Counsel for *Amicus Curiae*

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INTEREST OF THE *AMICUS CURIAE*[1]

The National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit corporation with a membership of more than 12,000 attorneys and 28,000 affiliate members in fifty states, including private criminal defense lawyers, public defenders, and law professors. NACDL was founded in 1958 to promote study and research in the field of criminal law, to disseminate and advance knowledge of the law in the area of criminal practices, and to encourage the integrity, independence, and expertise of defense lawyers in criminal cases. The American Bar Association recognizes NACDL as an affiliate organization and awards it full representation in its House of Delegates.

NACDL seeks to promote the proper and constitutional administration of justice, and to that end concerns itself with the protection of individual rights and the improvement of the criminal law, practices, and procedures. NACDL filed an *amicus curiae* brief in *Godinez* v. *Moran*, 509 U.S. 389 (1993), and submits this brief in the hope that it may aid the Court in its consideration of the constitutional mandate that all criminal defendants receive a fair trial.

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[1] The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

SUMMARY OF ARGUMENT

This case implicates the twin rights of a criminal defendant to a fair trial and to self-representation. The Court's precedents concerning these two rights have developed such that they may conflict when a defendant who is incapable by reason of mental infirmity from representing himself but sufficiently capable of assisting counsel and therefore "competent" wishes to waive counsel and proceed *pro se*. In *Godinez* v. *Moran*, 509 U.S. 389 (1993), a case involving not a trial but a plea of guilty, this Court held that such self-representation is acceptable as a constitutional matter so long as the waiver of counsel was knowing, intelligent, and voluntary. Thus, under *Godinez* a mentally-infirm criminal defendant may be permitted to waive the right to a fair criminal proceeding.

The decision in *Godinez* hinged on a discrepancy between the common law and modern tests for competency. *Godinez* noted both that self-representation was the norm at common law and that requiring competency as a prerequisite to trial dates back at least to Blackstone. The lesson the Court drew from these points, however—that any competent defendant must be permitted to represent himself—ignores a *Gideon*-era shift in the competency test. Historically, courts had focused on defendant's capacity for self-representation, only considering ability to assist counsel if, in fact, counsel was present. But under the modern competency standard, first articulated in *Dusky* v. *United States*, 362 U.S. 402 (1960), the presence of counsel is assumed and the competency standard inquires into defendant's ability to assist counsel.

Under the *Dusky* standard, some self-represented individuals could be deemed competent—because they can assist counsel—even though they may not have been found competent to represent themselves under the common law standard. This class of individuals is left vulnerable by a legal framework which weighs the right to self-representation over the right to a fair trial. Ideally, in the exercise of prosecutorial discretion, States would not bring such defendants to trial. Prosecutors, however, can be expected to face pressure to push forward with criminal proceedings in many such cases. Thus, NACDL believes that resolution of this issue by the Court is necessary.

NACDL proposes that the Court adopt one of two approaches. First, while *Godinez* rejected establishing separate competency standards for represented and *pro se* defendants and concluded that one competency standard should apply to the entire criminal proceeding, this Court could modify the *Dusky* standard to eliminate the presumption that counsel will be present, returning the competency standard to its historic, defendant-centered formulation. Under that standard, the presence of counsel is not assumed: if an unrepresented defendant is not able to present a reasoned defense due to his mental infirmity then he is found not competent. *If*, however, counsel *is* present, application of the standard will take that fact into consideration in determining whether the defendant, as represented, can present a reasoned defense.

Alternatively, if the Court is not inclined to return to the common law competency standard, it should at the very least permit States to appoint an

attorney to represent mentally-infirm defendants whose competency is dependent upon the assistance of counsel. The Sixth Amendment right of self-representation is not absolute, and protecting the right to a fair trial of defendants who would be deemed incompetent under the common law standard is an appropriate reason for recognizing an exception.

ARGUMENT

I. The Court Should Return the Competency Standard to Its Traditional Formulation

1. This case concerns the troubling intersection of two Constitutional rights: the due process right of criminal defendants to be tried only if mentally competent and the Sixth Amendment right of criminal defendants to represent themselves. See *Cooper* v. *Oklahoma*, 517 U.S. 348, 354 (1996) (the Court has "repeatedly and consistently recognized that the criminal trial of an incompetent defendant violates due process") (internal quotation marks and citation omitted); *Faretta* v. *California*, 422 U.S. 806 (1975) (recognizing a Sixth Amendment right to self-representation).

The Court has articulated the standard for competency to stand trial as "whether the defendant has 'sufficient present ability *to consult with his lawyer* with a reasonable degree of rational understanding' and has 'a rational as well as factual understanding of the proceedings against him.'" *Godinez* v. *Moran*, 509 U.S. 389, 396 (1993) (quoting *Dusky* v. *United States*, 362 U.S. 402 (1960)) (emphasis added). At the same time, however, the Court has stated that "a criminal defendant's ability

to represent himself has no bearing upon his competence to *choose* self-representation," all that matters is that he makes that choice "competently and intelligently." *Id.* at 400 (internal quotation marks and citation omitted) (emphasis in original). These formulations of the competency requirement and the right to waive counsel, both of them intended to protect criminal defendants' interests, in fact deny due process to an identifiable subset of defendants: self-represented individuals such as Respondent who have the ability to "consult with counsel" and thus are competent to stand trial, yet by reason of mental infirmity are not themselves capable of presenting a reasoned defense. See Pet. App. at 14a (Supreme Court of Indiana holding "because Edwards was found competent to stand trial he had a constitutional right to proceed pro se and it was reversible error to deny him that right on the ground that he was incapable of presenting his defense").

2. The problem presented by defendants such as Respondent came before the Court fifteen years ago in *Godinez*. There, in response to an effort by an arguably mentally-infirm defendant to waive counsel and plead guilty to a capital offense, the Ninth Circuit held that competency to waive constitutional rights "'requires a higher level of mental functioning than that required to stand trial.'" *Godinez*, 509 U.S. at 394 (quoting *Moran* v. *Godinez*, 972 F.2d 263, 266 (9th Cir. 1992)). This Court reversed, explaining that "[r]equiring that a criminal defendant be competent has a modest aim: It seeks to ensure that he has the capacity to understand the proceedings and to assist counsel." *Id.* at 402. The Court therefore "reject[ed] the notion that competence to plead guilty or to waive the right to counsel must be

measured by a standard that is higher than (or even different from) the *Dusky* standard." *Id.* at 398.

In reaching this conclusion, both the Court and a concurring opinion noted that, at common law, "competent" defendants routinely represented themselves at all stages of criminal proceedings, including trial. The Court stated:

> We note also that the prohibition against the trial of incompetent defendants dates back at least to the time of Blackstone. * * * It would therefore be difficult to say that a [competency] standard which was designed to determine whether a defendant was capable of defending himself is inadequate when he chooses to conduct his own defense.

Godinez, 509 U.S. at 400, n.11 (internal quotation marks and citation omitted). Likewise, the concurrence reasoned:

> The Due Process Clause does not mandate different standards of competency at various stages of or for different decisions made during the criminal proceedings. That was never the rule at common law * * * . A number of 19th-century American cases also referred to insanity in a manner that suggested there was a single standard by which competency was to be assessed throughout legal proceedings.

Id. at 404–405 (Kennedy and Scalia, JJ., concurring).

This reliance on the historical fact of competent individuals representing themselves during trial at common law was misplaced for the simple reason that the competency standard at common law was *not* the same competency standard later adopted in

Dusky. The difference between the common law and *Dusky* standards explains why individuals, including arguably Respondent, may fall through the cracks.

3. Unlike the *Dusky* standard, which inquires into defendant's "ability to consult with his lawyer" in order to "assist counsel," *Godinez*, 509 U.S. at 396, 402, the competency standard at common law focused entirely on defendant's capacity to present his *own* defense. It was long the rule at British common law that "if, after he has pleaded, [a] prisoner becomes mad, he shall not be tried; for how can he make his defence?" 4 Blackstone, Commentaries *24; see also 1 Hale, The History of the Pleas of the Crown *34–*35 (1736) (same). As explained by New York's high court:

> [T]he humanity of the law of England had prescribed that no man should be called upon to make his defense at a time when his mind was in such a situation that he appeared incapable of doing so; that however guilty he might be, the trial must be postponed to a time when, by collecting together his intellects, and having them entire, he should be able so to model his defense, if he had one, as to ward off the punishment of the law * * *.

Freeman v. *People*, 4 Denio 9, 27 (N.Y. Sup. Ct. 1847); see also *Youtsey* v. *United States*, 97 F. 937, 943 (6th Cir. 1899) (noting that the test at British common law was "whether the accused [could] make a rational defense") (citing 2 Bish. Cr. Proc. § 666; *Rex* v. *Frith*, 22 How. St. Tr. 307; *Reg.* v. *Berry*, 1 Q.B. Div. 447; *Rex* v. *Pritchard*, 7 Car. & P. 303). Thus, as recounted by this Court:

> Beginning with the earliest cases, the issue at a sanity or competency hearing has been "whether the prisoner has sufficient understanding to comprehend the nature of this trial, *so as to make a proper defence to the charge.*"

Cooper, 517 U.S. at 357 n.8 (quoting *King* v. *Pritchard*, 7 Car. & P. 303, 304, 173 Eng. Rep. 135 (1836)) (emphasis added).

Early American courts followed this British common law precedent, holding that a defendant may only be tried if he "is so far sane as to be competent in mind to *make his defense*, if he has one; for, unless his faculties are equal to that task, he is not in a fit condition to be put on his trial." *Freeman*, 4 Denio at 28 (emphasis added); see also American Bar Association Criminal Justice Mental Health Standards 161 (1989) ("The British common law rules preventing trial of mentally incompetent defendants were transposed virtually intact into early nineteenth-century United States jurisprudence"); Weihofen, Mental Disorder as a Criminal Defense 428-29, 431 & n.8 (1954) (collecting cases) ("It has long been the rule of the common law that a person cannot be required to plead to an indictment or be tried for a crime while he is so mentally disordered as to be incapable of making a rational defense").

The common law test for competency, allowing a defendant to be tried only if he is capable of presenting a rational defense, continued to be applied by courts well into the middle of the 20th century. See, *e.g.*, *Moss* v. *Hunter*, 167 F.2d 683, 685 (10th Cir. 1948) (describing standard in habeas proceeding as "whether an accused has the mental

capacity to comprehend his own condition with reference to the accusation pending against him and *is capable of rationally conducting his defense*") (emphasis added); *Hunt* v. *State*, 27 So.2d 186, 191 (Ala. 1946) (describing standard as "whether the defendant is capable of understanding the proceedings and of making his defense [such that] he may have a full, fair and impartial trial"); *State ex rel. Townsend* v. *Bushong*, 65 N.E.2d 407, 408 (Ohio 1946) (describing the "well-settled common-law rule" as "whether the accused has sufficient soundness of mind to comprehend his position, to appreciate the charges against him and the proceedings thereon, and to enable him to make a proper and rational defense"); *State* v. *Seminary*, 115 So. 370, 372 (La. 1928) (describing standard as "whether the accused was sufficiently sane * * * during the course of the trial to understand the nature and object of the proceeding against him, to comprehend his own condition in reference thereto, and was capable of conducting his defense in a rational manner").

Indeed, as late as 1954 this Court acknowledged the ongoing vitality of the common law test for competency. In *Massey* v. *Moore*, 348 U.S. 105 (1954), the Court considered a defendant's claim that he was "insane and unable to defend himself" during his trial in Texas state court. *Id.* at 106–107. In granting the defendant's habeas petition, this Court explained that "evidence to support the finding that petitioner was competent to stand trial with a lawyer" was not necessarily "sufficient to sustain the conclusion that he was competent to stand trial without a lawyer." *Id.* at 108. Thus, the Court reaffirmed in *Massey* that competency requires the ability to represent oneself at trial.

4. The focus of the common law competency standard on defendant's ability to represent himself flowed naturally from the unavailability of counsel for most defendants at common law, when a right to counsel did not exist. See, *e.g.*, *Godinez*, 509 U.S. at 400 n.11; 4 Blackstone, Commentaries *349 (citing 2 Hawk. P.C. 400) (describing "a settled rule at common law, that no counsel shall be allowed a prisoner upon his trial * * * unless some point of law shall arise proper to be debated"); *Betts* v. *Brady*, 316 U.S. 455, 471 (1942) ("[I]n the great majority of the states, it has been the considered judgment of the people, their representatives and their courts that appointment of counsel is not a fundamental right essential to trial."); *Faretta*, 422 U.S. at 850 (Blackmun, J., dissenting) (recognizing that "self-representation was common, if not required, in 18th century English and American prosecutions").

Although many defendants remained unrepresented during the first half of the 20th century, an increasing number of defendants were receiving assistance of counsel. But even in those cases the courts continued to describe the basic test for competency as the ability to present a rational defense. See, *e.g.*, *State* v. *Severns*, 336 P.2d 447, 452 (Kan. 1959) (in case involving represented defendant, describing standard as whether a defendant is capable of "comprehend[ing] his position, understand[ing] the nature and object of the proceedings against him and [conducting] his defense in a rational manner"); see also, *e.g.*, *Jordan* v. *State*, 135 S.W. 327, 329 (Tenn. 1911); *Youtsey*, 97 F. at 943–44.

In *applying* this standard to represented defendants, however, courts began to consider

whether, as a factual matter, a defendant receiving the assistance of counsel might be able to "conduct his defense rationally" if he has "sufficient mental capacity to give advice to his counsel concerning his defense." *Jordan*, 135 S.W. at 328-29; see also *Severns*, 336 P.2d at 454 (concluding that represented defendant "was capable, with the assistance of his attorneys, to conduct his defense in a rational manner"); *Youtsey*, 97 F. at 946 (describing relevant consideration for a represented defendant as "whether the accused was in truth incapable of understanding the proceedings, and intelligently advising with his counsel as to his defense"). Nevertheless, the relevant *standard*—the *defendant's* ability to present a rational defense—remained the same.

5. Just six years after *Massey* applied the common law test for determining competency, see *supra* at 9, the Court issued a two paragraph, *per curiam* decision in *Dusky* that restated the test for competency based on an *assumption* that counsel would be present.

Dusky itself concerned only the scope of a recently-enacted federal statute governing competency in federal cases, 18 U.S.C. § 4244 (1949) (current version at 18 U.S.C. § 4241 (2006)). *Dusky*, 362 U.S. at 402. Under this statute, a defendant could not be tried in federal court if he was "unable to understand the proceedings against him or *properly to assist in his own defense.*" 18 U.S.C. § 4244 (1949) (current version at 18 U.S.C. § 4241(a)) (emphasis added).

That Congress would focus the competency inquiry on defendant's ability to "assist" another in his defense—an important change from the common

law standard—is not surprising because, at the time the statutory language in question was enacted, all federal defendants had a Sixth Amendment right to counsel. See *Johnson* v. *Zerbst*, 304 U.S. 458 (1938).[2] Congress likely assumed that criminal defendants would exercise this right to counsel in conditioning competency on one's ability to "*assist* properly in his defense," rather than on the common law test asking whether a defendant could "*make* a rational defense."

In any event, the Court in *Dusky* interpreted the statute to require federal courts to consider whether a defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." 362 U.S. at 402. The Court found insufficient evidence in the record to support the lower court's finding of Mr. Dusky's competency under the statute, and hence it did not address whether the Constitution might require some greater showing. Moreover, because an attorney had "admirably represented [Mr. Dusky] in the trial court," *Dusky* v. *United States*, 271 F.2d 385, 387 (8th Cir. 1959), *rev'd*, 362 U.S. 402 (1960), the Court had no occasion to consider whether some different showing would be required—either under the statute or by the Constitution—for an unrepresented defendant. See *Brooks* v. *McCaughtry*, 380 F.3d 1009, 1012 (7th Cir. 2004) (Posner, J.) (recognizing that "[s]elf representation was not the issue in *Dusky*" and that the holding in *Dusky* was based

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[2] The right to counsel was extended to state court defendants in 1963 by *Gideon* v. *Wainwright*, 372 U.S. 335 (1963).

upon "an assumption that the defendant has a lawyer—that he is not trying to represent himself").

6. All told, an important underlying assumption of *Godinez*—that criminal defendants meeting the *Dusky* standard, with its focus on ability to assist counsel, would have been deemed competent to represent themselves at common law—appears to have been based on an invalid premise. As we have seen, the common law standard inquired into a defendant's ability to represent *himself* and examined his ability to assist counsel only in those cases where there was, in fact, counsel present. It is this variance between the common law and *Dusky* standards which has given rise to the problem confronting the Court in this case: an unrepresented defendant such as Respondent who arguably lacks the ability *himself* to present a defense at trial, yet who has been deemed competent under the *Dusky* standard.

Given the root of the problem in the *Dusky* standard's flawed assumption that counsel is present and defendant need only assist him, NACDL urges a return to the common law standard for determining competency. Under that standard, unrepresented defendants whose mental infirmity renders them unable to mount a defense simply will not be tried while, at the same time, represented defendants who are capable of mounting a defense through counsel (and may be eager to do so) will have their day in court.[3] Application of the common law standard will

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[3] Petitioner suggests casting the test for a defendant unable to represent himself as "whether the defendant cannot communicate coherently with the court or a jury." Petitioners Brief at 20. NACDL agrees than this could be one factor

(*continued next page*)

fully protect both the due process right to be tried only if competent and the Sixth Amendment right to choose whether or not to waive counsel. The *Dusky* standard's assumption that counsel is present and that defendant need only assist him, conversely, should be abandoned because it has been wholly undermined by *Faretta*'s recognition of the Sixth Amendment right to waive counsel.

Notably, the Court initially adopted this reasoning in a case decided just six years after *Dusky*, *Westbrook* v. *Arizona*, 384 U.S. 150 (1966). In that case, the defendant had been convicted after being found competent to proceed to trial with the assistance of counsel. After the competency hearing, the defendant waived counsel and proceeded to trial *pro se*. This Court ruled that, "[a]lthough petitioner received a hearing on the issue of his competence to stand trial," his conviction could not stand unless there was also an inquiry into his competence to "proceed, as he did, to conduct his own defense." *Id.* at 150. Thus, the Court recognized then that a defendant could only be found competent to proceed *pro se* where he is sufficiently able to "conduct his own defense." *Id.*[4]

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considered by the courts, but believes that courts more broadly should take into consideration any manifestation of a criminal defendant's mental infirmity which prevents him from presenting his own defense.

[4] Despite this clear formulation, the Court in *Godinez* distinguished *Westbrook* by suggesting that the "competence" referenced in *Westbrook* referred only to the question of whether defendant's waiver of counsel was "intelligent and voluntary." *Godinez*, 509 U.S. at 401-02. However, this reading of *Westbrook* ignores the plain language of the decision, which was focused specifically on the defendant's "competence to

(*continued next page*)

A return to the common law standard for determining competency also would be most consistent with the overarching approach to competency taken by the Court in *Godinez*. As an initial matter, and as discussed above, both the majority and the concurring opinions in *Godinez* relied upon an assumption that the modern approach to determining competency was consistent with the common-law approach. See *supra* at 6. It seems unlikely that the Court would have ruled as it did had it fully considered the differences between the common law and *Dusky* standards for competency—footnote 11 in the majority opinion, for example, would have been wholly out of place. See *supra* at 6.

Likewise, as the concurrence in *Godinez* explained, "ability to consult with [a] lawyer" is not the touchstone of the competency standard:

> Although the *Dusky* standard refers to "ability to consult with [a] lawyer," the crucial component of the inquiry is the defendant's possession of a "reasonable degree of rational understanding." In other words, the focus of the *Dusky* formulation is on a particular level of mental functioning, which the ability to consult counsel helps identify. The possibility that consultation will occur is not required for the standard to serve its purpose.

Godinez, 509 U.S. at 403–04 (Kennedy and Scalia, JJ., concurring) (quoting *Dusky*, 362 U.S. at 402). If the standard is properly understood as focusing on

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waive his constitutional right to the assistance of counsel *and* proceed, as he did, *to conduct his own defense*." *Westbrook*, 384 U.S. at 150 (emphases added).

defendant's "rational understanding," an issue as to which ability to consult with counsel is only one factor for consideration, the articulation of the standard in *Dusky* is misleading. Stating the standard as it was expressed at common law—whether the defendant is able to present a reasoned defense—would clarify for trial judges the proper focus of their inquiry.[5]

Finally, both the majority and concurring opinions stressed the undesirability of having separate competency standards applicable to specific stages of a criminal proceeding, such as pleading, trial, and so on. See *Godinez*, 509 U.S. at 398; *id.* at 404 (Kennedy and Scalia, JJ. concurring) ("The Due Process Clause does not mandate different standards of competency at various stages of or for different decisions made during the criminal proceedings."). Application of the common law standard for determining competency would avoid the necessity of multiple competency standards in a way the solution anticipated by the question presented—having two competency determinations in a given criminal proceeding, one for ability to be subjected to criminal

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[5] The concurrence went on to state: "If a defendant elects to stand trial and to take the foolish course of acting as his own counsel, the law does not for that reason require any added degree of competence." *Godinez*, 509 U.S. at 404 (Kennedy and Scalia, JJ., concurring). As a statement of the law, this can only be true if one assumes that application of the *Dusky* standard ensures that the mentally-infirm defendant possesses sufficient competency to represent himself at trial, such that the due process requirement of a fair trial is satisfied. As presently articulated, the *Dusky* standard provides no such assurance.

proceedings and another for ability to actually go to trial unassisted by counsel—does not.[6]

7. One might fear that returning to the common law standard would encourage mentally-infirm defendants to waive counsel in hopes that they would be found not competent to represent themselves, thereby stalling or even derailing criminal proceedings. Such a concern, however, should not long detain the Court.

First, a determination that a defendant is not competent is hardly the equivalent of a "get out of jail free" card. An individual found incompetent will nevertheless be detained for a "reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future." *Jackson* v. *Indiana*, 406 U.S. 715, 738 (1972); see also 18 U.S.C. § 4241(d)(2) (permitting detention for a reasonable period until either the defendant's mental condition is improved so trial may proceed or the charges are

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[6] In applying the common-law standard, to be sure, an additional competency hearing could be required if the defendant, for example, waived counsel after the initial competency determination had been made. This would not entail a different standard, however, simply application of the same standard—ability to present a reasoned defense—to a new set of facts—the defendant's change in status from represented to unrepresented. This is no different than the need for a new competency determination should a defendant's mental state change in the course of the criminal proceeding. See *Godinez*, 509 U.S. at 408 (Kennedy and Scalia, JJ., concurring) ("Trial courts have the obligation of conducting a hearing whenever there is sufficient doubt concerning a defendant's competence").

dropped); Mickelson, "Unspeakable Justice": The Oswaldo Martinez Case and the Failure of the Legal System To Adequately Provide for Incompetent Defendants, 48 Wm. & Mary L. Rev. 2075, 2089–92 & nn. 102–04 (2007) (surveying state law and finding that the competency and civil commitment laws of almost all states mirror federal law with only minor variations). If the accused is found to pose a danger to society, detention also can extend until a finding that the accused no longer poses a risk of harm. 18 U.S.C. § 4246(d); see, *e.g.*, *United States* v. *Sahhar*, 56 F.3d 1026, 1028–30 (9th Cir. 1995) (upholding indefinite detention of a mentally-infirm defendant who was found to pose a danger to society for a period of time that exceeded the maximum sentence for the crime with which he was charged). Indeed, even if a subsequent review finds no substantial probability of regaining the capacity to proceed to trial and no dangerousness, an accused still faces potentially longer-term civil confinement. See 18 U.S.C. § 4246; Mickelson, *supra*, at 2089–92 & nn. 102–104.

Second, and more importantly, whatever the number (which is likely to be quite small) of criminal defendants who would be found capable of assisting counsel but incapable of representing themselves, these defendants' due process rights to a fair trial are at stake. Accordingly, even if application of the common law standard does require States, in some instances, to satisfy themselves with pretrial and civil confinement rather than a criminal prosecution, governments have been accepting that trade-off since Blackstone. It is a small price to pay in order to avoid the spectacle of a trial against an individual

incapable by reason of mental-infirmity of defending himself.

II. Alternatively, the Court Should Require Counsel for Unrepresented Defendants Not Capable, by Reason of Mental Infirmity, of Presenting Their Own Defense

If the Court elects to retain the competency standard as articulated in *Dusky*, then NACDL would agree with Petitioner that States should be given the option of requiring counsel for those unrepresented defendants who are competent under the *Dusky* standard yet, due to their mental infirmity, are not capable of defending themselves. Indeed, NACDL believes that States (and the federal government) not only should be permitted to require counsel for such defendants, but that due process requires them to do so. In such circumstances, the due process right to a fair trial should trump the right to self-representation.

1. Whether a State should be permitted to require counsel for unrepresented defendants who, by reason of their mental infirmity, are not capable of mounting a defense without assistance of counsel, requires consideration and weighing of the due process right to a fair trial and the right to self-representation.[7]

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[7] One might think that a determination that a defendant's waiver of counsel was knowing and intelligent might also establish his competency to stand trial unassisted by counsel, but *Godinez* suggested otherwise in distinguishing the competency to stand trial determination from the knowing and intelligent determination: "[T]he competence that is required of a defendant seeking to waive his right to counsel is the

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This Court has "repeatedly and consistently recognized that 'the criminal trial of an incompetent defendant violates due process.'" *Cooper*, 517 U.S. at 354 (quoting *Medina* v. *California*, 505 U.S. 437, 453 (1992)); see also *Pate* v. *Robinson*, 383 U.S. 375, 378, 385 (1966). As the Court stated in *Massey*,

> [n]o trial can be fair that leaves the defense to a man who is insane, unaided by counsel, and *who by reason of his mental condition* stands helpless and alone before the court.

Massey, 348 U.S. at 108 (emphasis added). Or, as more recently stated:

> [I]t would be * * * a reproach to justice and our institutions, if a human being * * * were compelled to go to trial at a time when he is not sufficiently in possession of his mental faculties to enable him to make a rational and proper defense.

Cooper, 517 U.S. at 366 (quoting *United States* v. *Chisholm*, 149 F. 284, 288 (S.D. Ala. 1906)); see also *Riggins* v. *Nevada*, 504 U.S. 127, 139 (1992) (Kennedy, J., concurring) ("Competence to stand trial

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competence to *waive the right*, not the competence to represent himself." 509 U.S. at 399 (emphasis in original). That statement and one following soon thereafter—"a criminal defendant's ability to represent himself has no bearing upon his competence to *choose* self representation," *id.* at 400 (emphasis in original)—may contribute to confusion in this area, and are best understood as simply reaffirming the ruling in *Faretta* that the extent of a criminal defendant's "'technical legal knowledge,'" *id.* (quoting *Faretta*, 422 U.S. at 836), has no bearing on his competence to waive counsel.

is rudimentary, for upon it depends the main part of those rights deemed essential to a fair trial").

Given its fundamental nature, the right to be competent when tried has been accorded the utmost protection by this Court. "[T]he right not to stand trial while incompetent is sufficiently important to merit protection even if the defendant has failed to make a timely request for a competency determination." *Cooper*, 517 U.S. at 354 n.4 (citing *Pate*, 383 U.S. at 384). Moreover, a defendant likely would not be permitted to affirmatively waive his right to be tried while competent, even if he is able to do so knowingly and voluntarily. See *Riggins*, 504 U.S. at 140 (Kennedy, J., concurring in judgment).

2. While the due process right not to be tried while incompetent dates back to British common law and has been vigorously protected by the courts, the right to self-representation is far from absolute. This Court did not even recognize a constitutional right to self-representation until its 1975 decision in *Faretta*. Previously, the right to self-representation in federal courts had been recognized only by statute. See *Faretta*, 422 U.S. at 812–13. Moreover, even in *Faretta* the Court cautioned that the right to self-representation can be terminated if a defendant "deliberately engages in serious and obstructionist misconduct." *Id.* at 834 n.46 (citing *Illinois v. Allen*, 397 U.S. 337 (1970)). More recently, the Court also has stated that the right to self-representation is afforded only to those defendants who are "*able* and willing to abide by rules of procedure and courtroom protocol." *McKaskle* v. *Wiggins*, 465 U.S. 168, 173 (1984) (emphasis added). In other words, if a defendant fails to engage in the conduct necessary to represent himself at trial—either because he is

unwilling to do so, *or because he is unable*—counsel may be appointed over his objection.

3. Prior to *Godinez*, this Court had not hesitated to resolve conflicts between a defendant's Sixth Amendment representational rights and his right to a fair trial in favor of the latter. In *Wheat* v. *United States*, 486 U.S. 153 (1988), the Court was asked to overturn a conviction because the district court did not permit the defendant to waive a conflict of interest so that he could be represented by a lawyer who also represented his co-defendants in a drug conspiracy case. The Court weighed the defendant's Sixth Amendment right to counsel of his choice against the right to a fair trial and held that "a district court may override a defendant's waiver of his attorney's conflict of interest" whenever necessary to ensure the fairness of his trial. *Id.* at 158. The Court explained that the Sixth Amendment right to counsel is not absolute and that "[f]ederal courts have an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them." *Id.* at 160; see also *id.* at 166 (Marshall, J., dissenting on other grounds) ("When a defendant's selection of counsel, under the particular facts and circumstances of a case, gravely imperils the prospect of a fair trial, a trial court may justifiably refuse to accede to the choice").

The issue raised by this case is virtually identical to the issue in *Wheat*. Like the Sixth Amendment right to counsel of one's choice, "the right to self-representation is not absolute." *Martinez* v. *Court of Appeal of California, Fourth Appellate Dist.*, 528 U.S. 152, 161 (2000) (citing *Faretta*, 422 U.S. at 834 n.6,

835). As the Court explained in *Wheat*, the purpose of the Sixth Amendment right to counsel is "simply to ensure that criminal defendants *receive a fair trial*." 486 U.S. at 159 (quoting *Strickland* v. *Washington*, 466 U.S. 668, 689 (1984) (emphasis added). Accordingly, just as *Wheat* held that the fundamental right to a fair trial outweighs the right to counsel of one's choice, this case requires that the right to a fair trial trump the already-qualified right to self-representation.

CONCLUSION

This Court should hold either that the due process right to a fair trial bars criminal proceedings against pro se criminal defendants presently incapable, by reason of mental infirmity, from presenting a defense themselves, or that States should be required to provide counsel for such defendants notwithstanding their waiver of counsel.

Respectfully submitted,

Of Counsel:
WILLIAM F. SHEEHAN
GOODWIN PROCTER LLP
901 New York Ave., N.W.
Washington, D.C. 20001
(202) 346-4000

BARBARA BERGMAN
CO-CHAIR, AMICUS COMMITTEE
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
1117 Stanford, N.E.
Albuquerque, NM 87131
(505) 277-3304

KEVIN P. MARTIN
Counsel of Record
ABIGAIL K. HEMANI
DAHLIA S. FETOUH
GOODWIN PROCTER LLP
Exchange Place
53 State Street
Boston, MA 02109
(617) 570-1000

Counsel for Amicus Curiae

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AMICUS CURIAE BRIEF

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In the Supreme Court of the United States

STATE OF INDIANA,

Petitioner,

v.

AHMAD EDWARDS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF OHIO, ALASKA, FLORIDA, HAWAII, ILLINOIS, KANSAS, MAINE, NEVADA, NEW HAMPSHIRE, NEW MEXICO, AND UTAH AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

MARC DANN
Attorney General of Ohio

WILLIAM P. MARSHALL*
Solicitor General of Ohio
**Counsel of Record*
ELIZABETH T. SCAVO
KELLY A. BORCHERS
Assistant Solicitors
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax

Counsel for Amicus Curiae
State of Ohio

Blank Page

TALIS J. COLBERG
Attorney General
State of Alaska

BILL MCCOLLUM
Attorney General
State of Florida

MARK J. BENNETT
Attorney General
State of Hawaii

LISA MADIGAN
Attorney General
State of Illinois

PAUL J. MORRISON
Attorney General
State of Kansas

G. STEVEN ROWE
Attorney General
State of Maine

CATHERINE CORTEZ MASTO
Attorney General
State of Nevada

KELLY A. AYOTTE
Attorney General
State of New Hampshire

ALBERT LAMA
Attorney General
State of New Mexico

MARK L. SHURTLEFF
Attorney General
State of Utah

QUESTION PRESENTED

May a state impose a higher standard for determining whether a defendant is competent to proceed pro se than the *Dusky* standard for competency to stand trial?

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STATEMENT OF AMICI INTEREST

The Amici States have a direct interest in this case because it could determine every state's level of autonomy in developing its own standards of competency for criminal defendant self-representation. Additionally, the Amici States possess a strong interest in ensuring that pro se defendants are afforded a fair trial. Indeed, this case will impact all of the participants in the state criminal justice system, including defendants, prosecutors, judges, jurors, crime victims, and the public at large, who all share an interest in the integrity of the system.

SUMMARY OF ARGUMENT

The Amici States urge the Court to grant certiorari in this case because the issue presented is of fundamental importance: do states have the freedom to impose a higher standard for determining if a defendant is competent to proceed pro se than the minimum constitutionally required standard?

The Supreme Court's prior precedent has left open the issue of the states' flexibility in defining pro se competency standards, and lower courts have reached different conclusions. The Court recognized the right to self-representation in *Faretta v. California*, 422 U.S. 806 (1975), but did not provide detailed guidelines to states regarding the enforcement of this newly recognized right. In *Godinez v. Moran*, the Court did suggest in dicta that states have flexibility to ratchet the competency standard upward, but the Court offered no discussion on that point, and the parameters for how much a state may "elaborate" remain unclear. 509 U.S. 389, 402 (1993). Additionally, the guidelines for applying *Faretta's* self-representation right are not intuitive, given the conceptual differences between the right to representation and the right to self-representation.

The question of what competency test a state may impose before permitting a defendant's self-representation is

of fundamental legal and practical significance. The question is recurring, because defendants with mental illnesses will continue to seek to proceed pro se, and the issue is of national significance, because every state court is charged with determining defendant competency and ensuring a fair trial for each defendant. The level of state discretion in fixing pro se competency standards affects the states' ability to control their own courtrooms, which in turn ensures the dignity of the criminal justice system, the rights of the defendant, and the public perception of justice. Eliminating state discretion in this area disrupts all of these goals. It also disrupts the finality of state court judgments, because defendants who received fair trials with competent counsel may appeal on the ground that the state, wisely, refused to permit a pro se defense.

Accordingly, the Court should accept review and resolve this fundamental issue.

REASONS FOR GRANTING THE WRIT

The Court should grant Indiana's petition for certiorari review. The issue presented has been left unresolved by the Court's prior precedent, resulting in dissonant treatment among lower courts. Also, the issue is critically important, implicating the very integrity of the judicial system and the finality of state court judgments.

A. The Court has left the issue open in the past, and lower courts are in conflict.

1. The Court's precedent does not define the scope of a state's discretion to impose heightened competency standards.

Dusky v. United States sets forth the competency standard necessary for a defendant to stand trial, requiring only that a defendant have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and a "rational as well as factual

understanding of the proceedings against him." 362 U.S. 402, 402 (1960). In *Godinez v. Moran*, the Court considered what competency standard applies to defendants waiving the right to counsel and concluded that "while States are free to adopt competency standards that are more elaborate than the *Dusky* formulation, the Due Process Clause does not impose these additional requirements." 509 U.S. 389, 402 (1993). Beyond its one sentence on the subject, the Court in *Godinez* did not offer any further explanation on a state's freedom to depart from *Dusky*.

The Court did not, for example, discuss how far a state might "elaborate" on the competency standard without running afoul of the defendant's right to self-representation, or whether the state could increase the threshold competency for pro se defense without also increasing the threshold competency for standing trial, or whether the state would be free to impose higher competency standards only in certain circumstances, such as when presented with indications of a defendant's mental illness or impairment. *Godinez* thus clarifies only the constitutional floor for a state to permit waiver of counsel: States need only examine a defendant's "competence to *waive the right*, not the competence to represent himself." See 509 U.S. at 399.

But while a state *need* not ask whether a defendant is competent to perform as counsel, a state may nonetheless *wish* to frame its inquiry this way, particularly when a criminal defendant seeking to proceed pro se has a history of mental illness or other impairment. As the Court has recognized, the right to self-representation can sometimes function as a sword as much as a shield by impairing the ability of pro se defendants to raise other constitutional defenses, *Martinez v. Court of Appeal of California, Fourth Appellate District*, 528 U.S. 152, 157 n.4 (2000), and states thus justifiably may take steps to help mentally impaired defendants avoid this danger. Indeed, a state might conclude that "a defendant who is utterly incapable of conducting his

own defense cannot be considered 'competent' to make such a decision, any more than a person who chooses to leap out of a window in the belief that he can fly can be considered 'competent' to make such a choice." See *Godinez*, 509 U.S. at 416 (Blackmun, J., joined by Stevens, J., dissenting). Thus, while establishing the constitutional floor, *Godinez* leaves wide open the question of what constitutional ceiling applies to a state's freedom to impose its own more stringent competency standard.

Furthermore, *Godinez* did not address other systemic problems that arise from a pro se defense, such as inefficiency, lack of decorum, or public perceptions of unfairness. As such, *Godinez* sheds no light upon the states' ability to raise the competency standards to address these more institutional concerns.

Nor does any of the Court's other precedent clarify the constitutionally permissible ceiling on state definitions of pro se competency. The case establishing the right to self-representation, *Faretta v. California*, 422 U.S. 806 (1975), itself does not foreclose the possibility that states may conduct heightened competency inquiries. While *Faretta* makes clear that "technical legal knowledge" is "not relevant" to whether a defendant is competent to proceed pro se, the Court said nothing regarding the relevance of a defendant's objective cognitive limitations, such as mental retardation or mental illness. *Id.* at 836; see also Todd A. Pickles, Note, *People v. Welch: A Missed Opportunity to Establish a Rational Rule of Competency to Waive the Assistance of Counsel*, 34 U.S.F. L. Rev. 603, 607 (2000) (describing *Faretta* as "silent as to the test for competency to choose self-representation").

Nor did *Faretta* present an appropriate opportunity for the Court to consider the proper limits on a severely mentally ill person's right to self-representation; indeed, the colloquy recounted in the Court's opinion indicates that Faretta's

answers to the trial judge's questions were responsive, coherent, and decorous. See *Faretta*, 422 U.S. at 808 n.3. The record in *Faretta* stands in stark contrast to the record in the present case, where the defendant was diagnosed schizophrenic and twice found incompetent to stand trial, see App. 2a–3a, and submitted nonsensical motions resembling random-word-generated spam to the trial court, see App. 42a–45a. Asking whether Edwards had sufficient presence of mind to launch his own defense is a far cry from asking whether a defendant has sufficient legal training.

Indeed, the Court has already signaled that clarifying the scope of the *Faretta* right is of paramount importance. Since *Faretta*, the Court has answered several questions regarding the right to self-representation. Besides clarifying the constitutionally required competency standard in *Godinez*, the Court has determined the absence of a right to self-representation on appeal, *Martinez*, 528 U.S. at 154, and has affirmed a state trial court's discretion to allow limited participation by standby counsel that was unsolicited by the pro se defendant, *McKaskle v. Wiggins*, 465 U.S. 168, 177 (1984). And the Court has acknowledged that *Faretta* has left open other questions that have no clear answer and on which circuits have split, such as whether the right to self-representation entails a right to law library access. See *Kane v. Garcia Espitia*, 546 U.S. 9, 10 (2005). Now, the particular question triggered by *Godinez's* dicta—the extent of a state's discretion to define competency—calls out for the Court's attention and resolution.

Because the Court's prior precedent leaves this important question unanswered, certiorari review is warranted. Whatever its precise scope, it is clear that "the right to self-representation is not absolute." *Martinez*, 528 U.S. at 161. "[T]he government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." *Id.* at 162. Indeed, the entire judicial system, federal and state, has an

interest in fostering ordered and fair legal proceedings. The Amici States here ask the Court to acknowledge their authority to impose a heightened self-representation competency standard to ensure that mentally ill and mentally impaired defendants receive fair trials.

2. Conflicts exist among both state supreme courts and federal circuit courts.

The question is ripe for the Court's review. As the petition for certiorari sets forth in greater detail, the lower federal and state courts have inconsistently interpreted *Godinez*'s dicta.

The decision below, for example, conflicts squarely with the Supreme Court of Wisconsin's reading of *Godinez* as affirming the state's authority to set a higher competency standard for self-representation than for standing trial. Wisconsin prevents a defendant who falls short of that heightened standard from proceeding pro se even if he has knowingly waived counsel. See *State v. Klessig*, 564 N.W.2d 716, 722–24 (Wis. 1997). Wisconsin trial judges look to factors that may affect a defendant's actual ability to defend himself, see *id.* at 724, as opposed to merely the defendant's "competence to *choose* self-representation," see *Godinez*, 509 U.S. at 399–400. The factors Wisconsin courts consider include the defendant's literacy and fluency in English, as well as physical or psychological disabilities. See *Klessig*, 564 N.W.2d at 724. In the present case, the trial court employed a similar definition of competency and looked to similar factors, asking whether Edwards was capable of "conducting a defense," and taking account of his schizophrenia and "rambling writings." But the Indiana Supreme Court found the trial court's formulation of competency and its consideration of such factors to be disallowed by *Faretta* and *Godinez*. App. 9a–14a. See also Pet. at 12–14, 16 (surveying other state cases); compare also *State v. Day*, 661 A.2d 539, 547 (Conn. 1995) (noting

Connecticut Supreme Court's prior holding that waiver standards higher than the constitutional minimum infringe on the defendant's right to self-representation) with *State v. Hartford*, 636 P.2d 1204, 1206 (Ariz. 1981) ("The standard of competence to waive the right to counsel is higher than that required to stand trial.").

Federal circuit courts are in similar tension. The Seventh Circuit reads *Godinez* to allow heightened competency tests for counsel waiver. See *Brooks v. McCaughtry*, 380 F.3d 1009 (7th Cir. 2004). The Ninth Circuit, in contrast, has opined that *Godinez* mandates a single competency test, and therefore a finding of competence to waive counsel necessarily entails competence for all other purposes. See *United States v. Hernandez*, 203 F.3d 614, 620 n.8 (9th Cir. 2000). See also Pet. at 13, 15–16 (surveying other federal cases).

The Court should grant certiorari review to resolve the confusion in the lower courts.

B. Whether states have the freedom to enhance the competency standard required for defendants requesting to proceed pro se is of great importance.

1. The issue confronts a frequently recurring problem of national scope.

The question of the constitutional limits on states' control over competency standards is necessarily a question that affects every state. Moreover, the question of how to treat pro se defendants, and, in particular, mentally ill pro se defendants, arises with some frequency. The Court should take up the issue to resolve this question that will continue to resurface across the country.

The number of pro se criminal litigants has increased in the past years. "Once mostly the practice of political dissidents or lawyer haters, self-representation in court has gone mainstream." Laura Parker & Gary Fields, *Do-It-*

Yourself Law Hits Courts, USA Today, Jan. 22, 1999, at 3A; accord Marie Higgins Williams, Comment, *The Pro Se Criminal Defendant, Standby Counsel, and the Judge: A Proposal for Better-Defined Roles*, 71 U. Colo. L. Rev. 789, 815 (2000). Although self-representation is more common in the civil context, recent years have seen a rise in pro se criminal defendants as well. See Sarah Livingston Allen, Note, *Faretta: Self-Representation, or Legal-Misrepresentation?*, 90 Iowa L. Rev. 1553, 1572 n.122 (2005). In one study of pro se defendants that analyzed the Federal Court Database, State Court Database, and Federal Docketing Database, an estimated .3 % to .5 % of felony defendants choose self-representation. See Erica J. Hashimoto, *Defending the Right of Self-Representation: An Empirical Look at the Pro Se Felony Defendant*, 85 N.C. L. Rev. 423, 447 (2007).

Criminal defendants seeking to proceed pro se will often suffer from mental illness. To be sure, some pro se defendants are simply eccentric. See *id.* at 455, 473 (citing reasons people choose to proceed pro se, such as to use the trial to make a political point). But the case law is replete with examples of defendants with serious mental illness requesting permission to represent themselves. See, e.g., *Godinez v. Moran*, 509 U.S. 389, 409–10 (Blackmun, J., joined by Stevens, J., dissenting) (noting psychiatric evaluation of defendant as severely depressed and defendant's own affirmation that he was on psychiatric medication); *United States v. Frazier-El*, 204 F.3d 553, 556–57 (4th Cir. 2000) (describing paranoid schizophrenia of defendant seeking to dismiss counsel); *People v. Lego*, 660 N.E.2d 971, 979 (Ill. 1995). And the National Mental Health Association estimates that up to 10 % of the more than 3500 death row inmates nationwide suffer from mental illness. See Howard Witt, *Inmate Granted Stay*, Chi. Trib., Feb. 5, 2004, at 16.

The frequency with which criminal defendants pursue their own defenses, and the recent evidence that truly mentally impaired defendants are blundering through their own trials unaided, should prompt the Court to re-examine and to clarify the practical limits that constitutionally may be imposed upon the right recognized in *Faretta*. *Cf. Martinez*, 528 U.S. at 164 (Breyer, J., concurring) (noting the need for "empirical research . . . [to] help determine whether, in general, the right to represent oneself furthers, or inhibits, the Constitution's basic guarantee of fairness.").

2. The issue directly affects the integrity of the judicial system.

To protect the integrity of the criminal justice system, the states must have flexibility to shape competency standards that respond to the very real practical concerns that arise in many pro se defendants' trials. "[D]efendants who choose to represent themselves may be inept to do so, may intend only to delay their trial, or may make a mockery of the legal system." Williams, *supra*, at 792. Permitting mentally ill defendants to launch their own defenses threatens the rights of defendants, the efficiency and decorum of the courtroom, the impartiality of the judge and jury, and the public perception of fairness.

Defining the self-representation competency standard not only affects the right to self-representation, but also reaches other rights of equal importance. When a petitioner invokes his constitutional right to self-representation, he necessarily waives his constitutional right to counsel. See *King v. Bobby*, 433 F.3d 483, 490 (6th Cir. 2006). But the right to counsel is considered of paramount importance because "it affects [the defendant's] ability to assert any other rights he may have." *Fields v. Murray*, 49 F.3d 1024, 1028 (4th Cir. 1995) (citing *Penson v. Ohio*, 488 U.S. 75, 84 (1988)). Indeed, the Court has recognized that the "right" to self-representation can sometimes function as a sword rather

than a shield, when cited as a "predicate for upholding the waiver of an[other] important right." See *Martinez*, 528 U.S. at 157 & n.4. If the right to self-representation is defined too robustly, it threatens the meaningful exercise of the right to counsel, to a fair trial, to cross-examine witnesses, and to remain silent, see *Taylor v. Hopper*, 596 F.2d 1284, 1291 (5th Cir. 1979), and general concerns regarding substantive and procedural due process arise, see *Lagway v. Dallman*, 806 F. Supp. 1322 (N.D. Ohio 1992).

In light of the pitfalls that await a pro se defendant, the skills needed to launch a meaningful pro se defense are far greater than the skills needed to communicate meaningfully with counsel. Just because a defendant can communicate his story to a trained lawyer with whom he enjoys a privilege of confidentiality does not mean the defendant can communicate with a judge or jury. And stepping into the shoes of his counsel requires tactical decision-making that may be beyond the defendant's mental capacity. A defendant may be able to explain to counsel his perception of events, but may be incapable of identifying or raising constitutional objections or understanding how to best further his legal positions. In short, "[c]ompetency for one purpose does not necessarily translate to competency for another purpose." *Godinez*, 509 U.S. at 413 (Blackmun, J., joined by Stevens, J., dissenting).

Because of these reasons, states may wish to ensure that pro se defendants possess not merely the competence to interact with an attorney, but rather the minimal competence to present their own coherent defense. The ordinary test for competence, asking whether a defendant is capable of consulting with counsel to assist in preparing his defense, see *Dusky*, 362 U.S. at 402, is an imperfect tool for testing the competence of one who plans to proceed *without* counsel. As Justice Blackmun noted, "[t]he reliability or even relevance of such a finding vanishes when its basic premise--that counsel will be present--ceases to exist." See *Godinez*, 509

U.S. at 413 (Blackmun, J., joined by Stevens, J., dissenting). Accordingly, although the *Dusky* test may be all that the constitution requires, see *Godinez*, 509 U.S. at 402, a state may reasonably conclude that prudence requires more.

Indeed, courts and scholars alike have expressed concern over the lack of protection for mentally ill defendants who elect to proceed pro se. "Some critics argue that the right to proceed pro se at trial in certain cases is akin to allowing the defendant to waive his right to a fair trial." *Martinez*, 528 U.S. at 161 n.9 (citing concurring opinion in *United States v. Farhad*, 190 F.3d 1097, 1106–07 (9th Cir. 1999)). One author has suggested that the "misguided unitary standard of competency . . . ignores the reality of criminal defendants with deeply impaired mental capabilities." See Pickles, supra, at 631. Another has concluded that "[f]or a mentally impaired defendant who seeks to act as his own attorney, . . . the current competency evaluation system is inadequate to protect his rights." Jennifer W. Corinis, Note, *A Reasoned Standard for Competency to Waive Counsel after* Godinez v. Moran, 80 B.U. L. Rev. 265, 267 (2000).

Moreover, a state's ability to ensure the fairness and orderliness of criminal trials benefits not only the defendant himself. Rather, by ensuring pro se defendants have at least a minimal capacity to present their own defense, state courts preserve integrity within the courtroom and the impartiality of the judge and jury, and thus serve the interests of all participants in the criminal justice system, including the prosecutor, judge, jury, victim's family, and public at large.

A judge faced with a mentally impaired pro se defendant may feel obliged to walk a defendant through the presentation of his case in order to prevent a trial's progress from derailing entirely. See *Taylor v. Hopper*, 596 F.2d 1284, 1291-92 (5th Cir. 1979) (stating that "the trial court announced in Taylor's presence that it would relax the usual rules and would give Taylor as much leeway 'as I can' and

would probably allow him to violate some rules in instances which would not be permitted if he were represented by counsel"). A judge may even feel obliged to call and question witnesses herself. See *McKaskle*, 465 U.S. at 177 n.7; cf. *Wheat v. United States*, 486 U.S. 153, 160 (1988) (stating trial courts possess responsibility to ensure fairness within trials).

While such involvement may ensure a minimal degree of efficiency and order to an otherwise chaotic courtroom, a judge's active participation in the development of a pro se defendant's case compromises her role as impartial jurist—a linchpin in our adversary system. As one commentator has explained:

> This impartiality is important for several reasons. It is important that the jury see the impartial nature of justice, in which they are being asked to participate. It is important that the judge avoid the conflicts of interest that may arise if he is supposed to make decisions neutrally while simultaneously informing the defendant of the law. And finally, it is important that the defendant and the prosecuting attorney both have an impartial tribunal before which they can present their cases.

Williams, *supra*, at 806. By bending procedural rules to allow the defendant to present his case, the judge runs the risk of offending other rights or privileges afforded to both the prosecution and the defense, or even giving the jury the impression that she is in favor of the defense.

A jury's impartiality may also often be compromised by the prejudicial effect of a mentally ill defendant's incoherent defense. A jury may easily become confused by or even biased against a pro se defendant attempting to convey his defense. For example, in a Texas murder case, *State v. Panetti*, the jurors became skeptical and fearful of the

mentally ill defendant, who paraded around the courtroom wearing an old-style Western purple cowboy costume and flipped coins to make decisions. See Jessica McBride, *How Can an Insane Man Defend Himself?*, Milwaukee J. Sentinel, Feb. 15, 2004, at J1. Thus, in such cases, although mental illness is typically considered a mitigating factor, it may become an aggravating factor because the jury views the mentally incompetent defendant as dangerous. *Id.* Even when a mentally ill defendant is not threatening, his defense may be compromised when he proceeds pro se. The jurors may think that the defendant is "putting on a show" instead of actually partaking in a serious legal proceeding. See Ralph Blumenthal, *Insanity Issue Lingers as Texas Execution Is Set*, N.Y. Times, Feb. 4, 2004, at A12. Thus, not only can jurors become confused regarding the actual legal arguments presented by a pro se defendant who acts in an incoherent and extremely bizarre manner, but they can also lose sight of the seriousness of the proceedings. Alternatively, the jury may become biased in the other direction: The prospect of "try[ing], convict[ing], and punish[ing] one so helpless to defend himself," see *Godinez*, 509 U.S. at 417 (Blackmun, J., joined by Stevens, J., dissenting), may play upon the jurors' sympathies to such a degree that they become inclined to acquit without regard for the real question of guilt. In either scenario, the defendant's performance becomes a form of improper extraneous evidence influencing the jury's decision, and a fair verdict is compromised.

Finally, "courts have an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them." *Wheat v. United States*, 486 U.S. 153, 160 (1988). Courts have noted the unavoidable problems with trial efficiency and respect for the courtroom when defendants decide to represent themselves. One district court, in holding that it is improper to deny a defendant the right of self-representation solely to ensure an orderly and

efficient trial, observed that "a measure of unorthodoxy, confusion and delay is likely, perhaps inevitable, in pro se cases." *United States v. Dougherty*, 473 F.2d 1113, 1124–26 (D.C. Cir. 1972). But when a pro se defendant suffers from a serious mental illness, mere unorthodoxy and confusion can quickly transform into chaos. Allowing states to screen out truly mentally unstable defendants from proceeding pro se permits states to maintain dignity in their courts of law.

When a defendant with a severe mental illness is permitted to proceed pro se, instead of the public viewing the allowance as a strengthened affirmation of the defendant's right to self-representation, people may perceive the trial as an abomination of the defendant's rights, most offensively of a citizen's right to a fair trial. Oftentimes national media attention focuses on the most egregious cases of the mentally ill representing themselves, shattering the public's confidence in its own justice system. See Witt, *supra*, at 16. For example, a few years ago, the press quoted Dr. F.E. Seale, a psychiatrist who treated a schizophrenic, bipolar patient and then later observed part of his patient's pro se defense, as asking, "[H]ow in the world can our legal system allow an insane man to defend himself?" See *id.* In the interest of maintaining the appearance of a fair trial, states must be free to exercise their discretion to raise the competency test for pro se criminal defendants.

3. The issue affects states' important interest in protecting the finality of their judgments.

States also have a strong interest in the finality of their judgments, and this interest is threatened in the absence of the Court recognizing a state's clear right to impose its own competency standard.

In many cases, a defendant succeeds in persuading a trial court to allow him to proceed without counsel against his better interests, only to challenge his conviction on appeal

on the basis of deprivation of counsel. See, e.g., *United States v. Ellerbe*, 372 F.3d 462, 466 (D.C. Cir. 2004); *United States v. Mitchell*, 788 F.2d 1232, 1234–35 (7th Cir. 1986); *Dunn v. Johnson*, 162 F.3d 302, 307–08 (5th Cir. 1998); *State v. Jordan*, 804 N.E.2d 1, 6–9 (Ohio 2004). Sometimes the defendant meets with success in obtaining a reversal. See, e.g., *Schafer v. Bowersox*, 329 F.3d 637, 650–51 (8th Cir. 2003); *Lego*, 660 N.E.2d at 979.

To avoid such a result, and to preserve the finality of its judgments, a state court might reasonably seek to err on the side of safeguarding a defendant's right to counsel. But when states are given no flexibility to impose a higher standard than the *Godinez* baseline, convictions become vulnerable to attack from the other direction: Mentally ill defendants, such as the Respondent, might successfully overturn their convictions upon a state trial court's *refusal* to allow waiver of the defendant's fundamental right to counsel.

A trial judge ruling on a defendant's request for self-representation thus faces a "peculiar problem." *Fields*, 49 F.3d at 1028. A judge evaluating a defendant's request to proceed pro se must "'traverse . . . a thin line' between improperly allowing the defendant to proceed pro se, thereby violating his right to counsel, and improperly having the defendant proceed with counsel, thereby violating his right to self-representation." *Id.* at 1029 (citing *Cross v. United States*, 893 F.2d 1287, 1290 (11th Cir. 1990)). The Tenth Circuit has noted the "'cat and mouse' game" played by the defendant who can appeal under his right to counsel if his request for self-representation is granted at the trial, and can appeal under his right to self-representation if his request is denied. *United States v. Treff*, 924 F.2d 975, 979 (10th Cir. 1991).

Of course, the tension between a defendant's right to counsel and a defendant's right to self-representation will be present in any case. But when a pro se defendant suffers from

a serious mental impairment, the delicate balance becomes even more difficult for a judge to strike. And a mentally impaired pro se defendant, in electing to proceed pro se, is far more likely to unwittingly sabotage her other procedural rights as well. The states legitimately protect the finality of their judgments when they err on the side of ensuring defendants receive proper assistance of counsel. The Court should permit states this breathing room to protect their defendants' rights.

CONCLUSION

For all of the above reasons, the Court should grant Indiana's petition and reverse the Indiana Supreme Court's decision.

Respectfully submitted,

MARC DANN
Attorney General of Ohio
WILLIAM P. MARSHALL*
Solicitor General of Ohio
**Counsel of Record*
ELIZABETH T. SCAVO
KELLY A. BORCHERS
Assistant Solicitors
30 East Broad Street
17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax

Counsel for Amicus Curiae
State of Ohio

September 13, 2007

JOINT APPENDIX

Nos. 07-208

IN THE

Supreme Court of the United States

STATE OF INDIANA,
Petitioner,

v.

AHMAD EDWARDS,
Respondent.

On Writ of Certiorari to the Supreme Court of Indiana

JOINT APPENDIX

MARK T. STANCIL*
Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP
1801 K Street, N.W.
Suite 411
Washington, DC 20006
202-775-4500

MICHAEL R. FISHER
151 N. Delaware Street
Suite 200
Indianapolis, IN 46204
317-327-3404

**Counsel of Record*
Counsel for Respondent

STEVE CARTER
Attorney General
THOMAS M. FISHER*
Solicitor General
JULIE A. BRUBAKER
HEATHER L. HAGAN
JUSTIN F. ROEBEL
NICOLE M. SCHUSTER
Deputy Attorneys General
Office of the Indiana Attorney General
IGC South, Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204
317-232-6201
317-232-7979 facsimile
**Counsel of Record*
Counsel for Petitioner

[Additional Counsel for Respondent Listed on Inside Cover]

Petition for Writ of *Certiorari* filed August 18, 2007
***Certiorari* Granted December 7, 2007**

DANIEL R. ORTIZ
MICHELLE D. MORRIS
University of Virginia
School of Law
Supreme Court Litigation
Clinic
580 Massie Road
Charlottesville, VA 22903
434-924-3127

DAVID T. GOLDBERG
Donahue & Goldberg, LLP
99 Hudson Street
New York, NY 10013
212-334-8813

Counsel for Respondent

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Pro Se Correspondence (07/20/00) 43a

Commitment Order Indiana Department of Mental Health (08/16/00) 48a

Correspondence to Court from Family and Social Services Agency (11/02/00) 50a

Confinement Authority Lacking Ability to Understand and Assist (11/08/00) 52a

Correspondence to Court from Family and Social Services Agency (03/14/01) 54a

Competence to Stand Trial Report of Steven H. Berger, M.D. (03/14/01)[1] 56a

Pro Se Motion to Dismiss Criminal Charges and Discharge the Defendant on Criminal Rule 4.[c] (05/29/01) 65a

Pro Se Motion of Permissive Intervention (06/26/01) 69a

Pro Se Correspondence (07/23/01) 80a

Dr. Ned P. Masbaum's Report (10/03/01) 84a

Pro Se Petition (04/22/02) 91a

Pro Se Petition (04/22/02) 93a

Pro Se Defence Objection (04/23/02) 95a

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[1] Pages 2 and 4 of this report, which appear at pages 58-60 and 62-64 of this Joint Appendix, were omitted (apparently unintentionally) from Edwards's appendix on appeal. Those pages are nonetheless part of the official record on appeal pursuant to Rules 2 and 27 of the Indiana Rules of Appellate Procedure (Rule 27 is reprinted at footnote 2, *infra*). They have now been supplied to the Clerk of the Supreme Court of Indiana, along with a notice dated February 1, 2008, explaining the circumstances, for transmittal with the remainder of the record to this Court.

Pro Se Motion for Competnet Dress Code (04/23/02) 97a

Pro Se Orders to the Clerk (04/15/02) 102a

Pro Se Order of Reference (04/15/02) 103a

Pro Se Consent to Jurisdiction by a Superior Court Magistrate Judge (4/15/02) 105a

Findings of Fact and Conclusions of Law on Defendant's Competence to Stand Trial (04/16/02)..... 106a

Pro Se Orders to the Clerk (04/22/02) 116a

Pro Se Orders to the Clerk (04/23/02) 117a

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Pro Se Orders to the Clerk (09/10/02) 120a

Pro Se P/T Motion to Protect Orders (09/16/02)..... 122a

Pro Se Satisfactory Service Line Proposed in Tort Claim Extent of Loss (09/25/02) 133a

Pro Se Motion for Competent Dress Code (09/26/02) ... 136a

Pro Se Motion For Transcript of Prior Trial (10/01/02) 146a

Pro Se Orders to the Clerk (10/03/02) 151a

Pro Se Defendants Plea (10/23/02) 153a

Pro Se Notice of Defense of Mental Disease and/or Defect (10/23/02)..... 155a

Dr. Philip M. Coons's Psychiatric Evaluation (11/26/02) 157a

Suggestion Of Incompetency (11/27/02) 166a

Pro Se Resonable Calculations (12/02/02) 170a

Pro Se Practice Routine (12/02/02) 181a

Dr. Dwight W. Schuster's Report (12/31/02)..... 186a

Dr. Ned P. Masbaum's Report (01/10/03)..... 190a

Pro Se Admission of Facts and Notice of Defense and Mental Disease and or Defect (03/21/03)..... 197a

Pro Se Petition for Hearing under IC 12-26-12-2 (05/14/03) 202a

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Dr. Robert J. Sena's Report (06/01/04)..... 212a

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Pro Se Orders to the Clerk (09/13/04)..... 237a

Pro Se Notice of Criminal Rule 4.C. (09/13/04)..... 238a

Pro Se Petition for Hearing (09/13/04)..... 239a

Pro Se Correspondence to Judge Hawkins (09/22/04) 241a

Pro Se Correspondence to Judge Nancy Broills: (09/22/04) 243a

Pro Se Motion for Court to Furnish Docket Sheets (10/21/04) 244a

Pro Se Motion to Dismiss and Discharge (11/01/04) 246a

Pro Se Correspondence to Judge Hawkins (11/01/04).. 249a

Pro Se Petition for Hearing (11/01/04)..... 250a

Notice of Intent to Interpose Defense of Insanity (08/01/05) 252a

Pro Se Filing (08/30/05) 254a

Pro Se Petition (08/30/05) 258a

Pro Se Correspondence (09/12/05) 261a

Pro Se Notice of Request Made (10/05/05) 263a

Pro Se Petition for Hearing (10/27/05) 265a

Marion County Jail Inmate Message Card 267a

Pro Se Correspondence to the Clerk of Court (12/09/05) 268a

Pro Se Petition (12/12/05) 275a

Pro Se Correspondence to the Clerk of Court (12/13/05) 277a

Pro Se Petition for Pro Se Actions (12/13/05) 279a

Pro Se Petitions for Pro Se Actions (12/13/05) 281a

Pro Se Correspondence to Judge Hawkins (12/19/05) 283a

Pro Se Petition of Settlement (12/19/05) 284a

Pro Se Orders to Clerk (12/22/05) 290a

Pro Se Correspondence to the Clerk of Court and *Pro Se* Motion (12/22/05) 293a

Pro Se Orders to the Clerk (12/28/05) 300a

State of Indiana Pre-Sentence Report (01/13/06) 305a

Pro Se Petition for Writ Mandamus (01/23/06) 326a

Pro Se Petition for Writ Mandamus (01/23/06) 328a

Edwards Exhibits 334a

Hearing transcripts and reports that are part of the official record on appeal pursuant to Indiana Rule of Appellate Procedure 27,[2] but that were only recently transcribed and were not included in Respondent Edwards's Appendix filed with the Indiana Court of Appeals and Supreme Court of Indiana

Verified Notice of Submission of Additional Transcripts (01/30/08) 343a

Competency Hearing Transcript (02/02/00) 347a

Competency Hearing Transcript (08/16/00) 357a

Competency Hearing Transcript (03/20/02) 383a

Competency Hearing Transcript (04/29/03) 464a

Pro Se Motion Hearing Transcript (06/27/05) 507a

Trial Court Order Under Review

Excerpt from Trial Transcript (12/19/05) 522a

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[2] Rule 27 provides as follows: "The Record on Appeal shall consist of the Clerk's Record and all proceedings before the trial court or Administrative Agency, whether or not transcribed or transmitted to the Court on Appeal. Any provision of these Rules regarding preparation of the Record on Appeal may be enforced by order of the Court on Appeal. The Record of Proceedings is abolished."

The following opinions have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the Petition for Certiorari:

Opinion of the Indiana Supreme Court reversing Edwards's convictions issued May 17, 2007 ..... Pet. App. 1a

Opinion of the Indiana Court of Appeals issued September 18, 2006 ..... Pet. App. 16a

Chronological List of Relevant Docket Entries

Marion Superior Court

July 15, 1999—Initial charges filed.

December 7, 1999—Defendant files Motion of Combined Notice of Insanity Defense and Petition for Examination to Determine Competence to Stand Trial.

December 8, 1999—Court appoints Drs. Schuster and Masbaum to examine Defendant.

February 2, 2000—Competency hearing.

August 16, 2000—Competency hearing.

August 16, 2000—Court issues order finding Defendant incompetent to stand trial and ordering commitment to Indiana Department of Mental Health.

March 14, 2001—Dr. Smith of Logansport State Hospital files report finding that Defendant is competent to stand trial.

September 12, 2001—Court orders Drs. Schuster and Masbaum to reexamine Defendant.

March 20, 2002—Competency hearing.

April 16, 2002—Court issues findings of fact and conclusions of law finding Defendant competent to stand trial.

November 27, 2002—Defendant files Suggestion of Incompetency.

December 2, 2002—Court orders Drs. Schuster and Masbaum to reexamine Defendant.

April 29, 2003—Competency hearing.

November 24, 2003—Court issues order finding Defendant incompetent to stand trial and ordering commitment to Indiana Department of Mental Health.

June 1, 2004—Logansport State Hospital files report suggesting Defendant has not gained competency.

July 29, 2004—Logansport State Hospital files report suggesting Defendant has gained competency.

August 4, 2004—Court orders Defendant returned to custody of Marion County Jail.

June 27-28, 2005—Two-day jury trial, where Defendant was convicted of theft and criminal recklessness, but hung on attempted murder and battery with a deadly weapon.

December 14, 2005—Defendant requests to proceed *pro se*.

December 19, 2005—Court denies Defendant's request to proceed *pro se*.

December 19-21, 2005—Jury trial, where Defendant was convicted of attempted murder and battery with a deadly weapon.

January 13, 2006—Pre-sentence investigation report filed.

January 17, 2006—Defendant sentenced to total executed sentence of 30 years.

Indiana Court of Appeals

February 15, 2006—Defendant files Notice of Appeal.

September 18, 2006—Court of Appeals issues order and opinion, reversing trial court in part and remanding with instructions to vacate Defendant's convictions for attempted murder and battery and to hold a trial on those charges.

Supreme Court of Indiana

October 18, 2006—State files Petition for Transfer.

May 17, 2007—Supreme Court issues order granting transfer, ordering Defendant's convictions for attempted murder and battery reversed, and remanding for further proceedings.

Supreme Court of the United States

August 15, 2007—State files Petition for Writ of Certiorari.

December 7, 2007—Petition for Writ of Certiorari granted, but limited to the following question, "May States adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?"

5:30 AM
9/3/99

Ahmad Edwards Cause No. 49G059907CFI21975

To my most hights fair and car judge, Gary L. Miller out of a great deal of honor and respect I wrote earlyer characterizing my concern with the high crim rate amoung young Americans and how influenced I am about organizing an association that helps the city with the war on volient crimes. I'm a unique example of the theory that works on young Ameracns. "If the essential expectations of success, by what is right is not balanced appropriately in the impression of our growing Ameracins. Then endeavors of tremendous offenceses will leave us empty of the ambishions it takes to properly estabish respectfull goals and dreams. Trying to stress the importance of cathices and values is what set's the standers, gentailmen, rather require for exceptance into dignified socity.

My amazing dection has grown vastly foucused throught my own theoreogical informed exposures of socializam this is the exclusive means for volountering my organization skills to services for young Americans. As an leader one must be self-controlled sensible well behaved friendly to strangers, and be able to teach. So now I must appropriatly build a good strong reputation and manifest a faithful marriage.

One has all-ready accoumplished a humbbling loyalty for the improvement of mankind.

These are just some of the projects exposing comendable atubrutes that's accrediting to dignified socity I've made so far.

Volountered to help feed the homeless

Volountered helping hand to orfins

Volounte at Wisher Morail Hospital

Volounter for bible study school

Volonntered with organization that worked with crim offenders

Volonntered to help clean-up Lake Shore Drive Nashvill

Volounter each Sunday to ride and help elderly people

Teached a small class twice a week of little kids self defence for free

Donate new clothing to church clothing room when thay are low

Exceptance in to a magnate program selected from 5000 as one of 5

Offered job with dupety sheriff's of Indianapolis Indiana

2000 hours down from beeing a licened privet dective

Attented Holy Angels Christian school

Volunter at the church to run films and cook popcorn for the kids

Elected for student goverment as pressdent of the borad

Donated art work to striving new youth group Nashvill

Master hights leveal of self defence

Elected for youth director N.A.A.C.P.

These are my short and long range goals I've set for myself.

1 Endorcement of liceneses oprators

2 G.E.D. deploma

3 Family in God's Name

4 Collage higher learing

5 Preast hood

6 Ploticial sicences background

7 Law background

8 Miltary Armed Forces

9 U.S.A. Olimipac Team

10 Privet dective liceneses

I'm proud of how well I have tryed to show respect to my public and socity

(Page 1 of 2)

STATE OF INDIANA	)	SS: IN THE MARION
	)	SUPERIOR COURT
COUNTY OF MARION	)	CRIMINAL DIVISION,
AHMAD EDWARDS	)	ROOM 5
VS.	)	CAUSE NO.:
	)	49G059907CF121975
STATE OF INDIANA,	)	
RESPONDENT.	)	

<<stamped>> FILED NOV 08 1999 <<signature>>
Sarah M. Taylor CLERK OF THE MARION
CIRCUIT COURT

'MOTION TO DISMISS COUNSEL'

Comes now the defendant 'Ahmad Edwards' hereby request that this court grant this motion, to dismiss the counsel of 'Mis. Diane Abel', and Mr. Bob Hill, for the following reasons:

1.) That defense counsel was appointed to this cause on the 13th day of October, 1999.

2.) The defense counsel refuses to answer defendants letters/questions or correspond with defendant pertaining to this cause.

3.) That a strong breakdown in communication has come forth between defendant and counsel, due to counsel and not defendant.

4.) That strong conflict of intrest exist between defendant and counsel, that defendant would not recieve fair and proper representation if counsel remain attached to defendants case.

(Cont. on page 2 of 2)

(Page 2 of 2)

"MOTION TO DISMISS COUNSEL – CONT."

5.) That defense counsel has not conducted proper investigation or filed motions in defendants behalf, as defendant has requested.

6.) That defense counsel has not visited defendant on a regular bases to inform defendant of findings or discuss the stragity of possible defense.

The defendant in this cause, cannot recieve the necessary assistance in order to prove his innocense to this court.

WHEREFORE, the defendant prays that this court grants this motion, or schedule a hearing where defendant can state his claim in this action for this said motion.

Respectfully submitted,

Ahmad Edwards
Defendant

C.C.: Clerk of Court
File

STATE OF INDIANA)	SS: IN THE MARION
COUNTY OF MARION)	SUPERIOR CORT
)	CRIMINAL DIVISION,
AHMAD EDWARDS)	ROOM 5
VS.)	CAUSE NO.:
)	49G059907CF121975
STATE OF INDIANA,)	(AS TO COUNT (II) C
RESPONDENT.)	FELONY 35-42-2-1
)	(AS TO COUNT (III) D
)	FELONY 35-42-2-2

I, the defendant, Ahmad Edwards, on the 9th day of November 1999, fully acknowledge and understand my right to enter a plea.

I, the defendant, Ahmad Edwards, hereby enter a plea of guilty, as to count II battery, class C felony I.C. 35-42-2-1.

I, the defendant, Ahmad Edwards, hereby enter a plea of guilty, as to count III criminal recklessness, class D felony I.C. 35-42-2-2.

Respectfully submitted
/s/ Ahmad Edwards
Ahmad Edwards
Defendant

<<written>>
Notary Cynthia Mann
Date 11-19-99

Dear Judg; Gary L. Miller

My name is Ahmad Edwards, and I am proud to say that the finishing up of two very important proposals, has come. The first proposal is a community base operation, that works for young disadvantaged Americans under the age of twenty one. Helping develop them into government professionals of the community (this program is governmental associated).

The second proposal is a campaign supporter of governmental relations assocation. That design campaign strategys for governmental candidates pursuancing publicly elected offical offices of the state. Exclusivly networking throught the community to present candaites, of the Democratic and or Republican Party's (this program is a federal cooperative education program).

Respectly Conststent;
/s/ Ahmad Edwards
Ahmad Edwards
Defendant

<<written>>
Notary Cynthia Mann
Date 11-19-99

STATE OF INDIANA	)	SS: IN THE MARION
	)	SUPERIOR CORT
	)	CRIMINAL DIVISION,
	)	ROOM 5
AHMAD EDWARDS	)	
VS.	)	CAUSE NO.:
STATE OF INDIANA	)	49G059907CF121975
RESPONDENT.	)	

<<stamped>> FILED NOV 23 1999 <<signature>>
Sarah M. Taylor CLERK OF THE MARION CIRCUIT COURT

'MOTION TO DISMISS COUNSEL'

Comes now the defendant "Ahmad Edwards" hereby request that this court grant this motion, to dismiss the counsel of 'Mis Diane Able," and "Mr Bob Hill", for the following reasons:

1.) That defense counsel was appointed to this cause on the 13th day of October, 1999.

2.) The defense counsel refuses to answer defendants letters/questions or correspond with defendant pertaining to this cause.

3.) That a strong breakdown in communication has come forth between defendant and counsel, due to counsel and not defendant.

4.) That strong conflict of intrest exist between defendant and counsel, that defendant would not recieve fair and proper representation if counsel remain attached to defendant case.

(cont. on page 2 of 2)

(page 2 of 2)

"MOTION TO DISMISS COUNSEL – CONT"

5.) That defense counsel has not conducted proper investigation or filed motions in defendants behalf, as defendant has requested.

6.) That defense counsel has not visited defendant on a regular bases to inform defendant of findings or discuss the stragity of possible defense.

The defendant in this cause, cannot recieve the necessary assistance in order to prove his innocense to this court.

WHEREFORE, the defendant prays that this court grants this motion, or schedule a hearing where defendant can state his claim in this action for this said motion.

Respectfully submitted
/s/ Ahmad Edwards
Ahmad Edwards
Defendant

<<written>>
Notary Cynthia Mann
Date 11-19-99

STATE OF INDIANA	)	IN THE MARION
COUNTY OF MARION	)	COUNTY
	)	SUPERIOR COURT
	)	CRIMINAL DIVISION,
	)	ROOM 5
STATE OF INDIANA	)	CAUSE NO.
V	)	49G059907CF121975
AHMAD EDWARDS	)	

<<stamped>> FILED DEC 07 1999 <<signature>>
Sarah M. Taylor CLERK OF THE MARION
CIRCUIT COURT

COMBINED NOTICE OF INSANITY DEFENSE
AND PETITION FOR EXAMINATION
AND MOTION FOR PSYCHIATRIC EXAMINATION
TO DETERMINE COMPETENCE TO STAND TRIAL

The defendant, Ahmad Edwards, by counsel of the Marion County Public Defender Agency, moves this Court, pursuant to I.C. 35-36-3-1, to appoint two (2) competent, disinterested psychiatrists to examine the defendant, Ahmad Edwards, and report to this Court on his competence to stand trial, and for a hearing on said issue, on the following grounds:

1. Counsel for the Defendant believes that the Defendant lacks ability to understand the proceedings and assist in the preparation of his defense.

2. Further, the defendant, Ahmad Edwards, by counsel, and purusant to I.C. 35-36-2-1, hereby serves notice of the Defendant's intent to raise the defense of insanity at the time of trial or the aboved entitled cause and contemporaneously with this notice petitions the Court, pursuant to I.C. 35-36-2-2, to appoint two competent, disinterested psychiatrists to examine the Defendant and to testify at trial.

WHEREFORE, the Defendant, by counsel, respectfully moves this Court to appoint two competent psychiatrists to examine the

Defendant and report on his competence to stand trial, and for all other relief just and proper in the premises.

Respectfully submitted,
/s/
Diane E. Abel
Deputy Public Defender
18510-49 A2998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the Marion County Prosecutor's Office by leaving a copy of same in the designated mailbox in Superior Court 5 on or before the date of filing.

Respectfully submitted,
/s/
Diane E. Abel

Marion County Public Defender Agency
1222 City-County Building
200 E. Washington St.
Indianapolis, IN 46204
317-327-4100

STATE OF INDIANA	)	SS: IN THE MARION
	)	SUPERIOR
	)	COURT
COUNTY OF MARION	)	CRIMINAL DIVISION,
	)	ROOM FIVE
STATE OF INDIANA	)	THE HONORABLE
VS.	)	GARY L. MILLER,
	)	JUDGE
	)	CAUSE NO.
<<written>>	)	49G059907C7121975
Ahmad Edwards	)	<<written>>

<<stamped>> FILED DEC 08 1999 <<signature>>
Sarah M. Taylor CLERK OF THE MARION CIRCUIT COURT

PSYCHIATRIC APPOINTMENT AND SHERIFF'S AUTHORIZATION

Dr. <<written>> Masbaum
P.O. Box 3010
<<written>> Carmel ~~Indianapolis~~, Indiana
<<written>>43032 46082
Dr. <<written>> Schuster
1016 Tuckahoe
Indianapolis, Indiana <<written>> 46260

YOU HAVE BEEN APPOINTED by the Court to examine the above named defendant, <<written>> Ahmad Edwards, as to whether he/she was of sound or unsound mind on the date of the alleged offense [ ] and as to whether or not the defendant has comprehension sufficient to understand the nature of these proceedings and aid his/her attorney in his defense.

The defendant is being held in the Marion County Jail. PLEASE CONTACT THE JAIL TO SET UP A TIME FOR YOUR EVALUATION OF THE DEFENDANT.

If you want to have the defendant admitted to Wishard Memorial Hospital Detention Ward for further tests, turn in this sheet to the Jail, and it will serve as authority for the Marion County Sheriff to transfer the defendant to the Hospital and to return the defendant to the Jail upon completion of the examination.

/s/ Gary L. Miller
GARY L. MILLER, JUDGE
MARION COUNTY
SUPERIOR COURT
CRIMINAL DIVISION FIVE

DATE: <<written>> 12-8-99

<<masthead>>
Indiana University
IU MEDICAL GROUP Specialty Care

Department of Physical Medicine and Rehabilitation
Clinical Building 368

541 North Clinical Drive
Indianapolis, Indiana
46202-5111

317-278-0200
Fax: 317-278-0206

NED P. MASBAUM, M.D.
Forensic Psychiatry
P.O. Box 3010
Carmel, Indiana 46082 U.S.A.
Telephone (317) 846-7727 Fax (317) 575-1898
Toll Free (888) 203-7746

December 22, 1999

Honorable Gary L. Miller, Judge
Marion Superior Court Criminal 5
W-305 City County Building
200 East Washington Street
Indianapolis, Indiana 46204

Re: Ahmad Edwards B/M 1/29/73 Cause No. 49G05-9907-CF-121975

Dear Judge Miller:

In accordance with your order, the above individual was seen for Psychiatric Examination.

PURPOSE OF EXAMINATION:

Provide an opinion regarding soundness of mind at the time of the alleged offense(s).

Provide an opinion regarding Competence to Stand Trial.

CHARGES AGAINST THIS INDIVIDUAL:

Count I: Attempt Murder, Class A Felony, 7-12-99
Count II: Battery, Class C Felony, 7-12-99
Count III: Criminal Recklessness, Class D Felony, 7-12-99
Count IV: Theft, Class D Felony, 7-12-99

QUALIFICATIONS OF EXAMINER:

Enclosed please find a copy of my resume that states my qualifications to provide a psychiatric opinion regarding this individual.

DATE OF EXAMINATION:

12-22-99

LOCATION OF EXAMINATION:

Marion County Jail, under satisfactory conditions.

DURATION OF EXAMINATION:

Approximately two (2) hours.

RECORDS AND INFORMATION AVAILABLE FOR REVIEW:

1.) Copy of the Probable Cause Affidavit and Charging Information.

2.) Copy of this individual's Criminal History.

3.) Copies of his letters sent to his Defense Attorney provided by Miss Abel.

IDENTIFICATION DATA:

This individual provided the following information:

NAME: Ahmad NMN Edwards
AGE: 26
DOB: 1-29-73
SSN: 309-78-9239
This individual was advised that this was a court ordered non-confidential psychiatric examination and agreed to proceed.

ACCOUNT OF THE ALLEGED OFFENSE(S) BY THIS INDIVIDUAL:

He described goal directed behavior, thinking and flight from the crime scene that occurred at that time. At that time he had not been consuming alcohol nor using illicit substances nor taking prescription medication from a Physician.

PAST MEDICAL HISTORY:

He said that he had no past Psychiatric care. However, he said then he saw a Psychiatrist "once" when he was on the "youth board of the National Urban League and they noticed that I had stress." He also said that he saw a "female Psychologist from 1991 to 1995 who was a mentor...she took a liking to me and encourage my creativity." No further specifics regarding treatment was obtainable from him. He is not receiving psychotropic medication at this time in Jail. He has received pain medication for his gun shot wound that occurred at the time of his arrest. He denied any past history of alcohol or illicit substance abuse nor dependence. It was noted that his Criminal History revealed an arrest for Public Intoxication. He said that he had been diagnosed once with heart flutter. He also sustained an injury to his left forehead in a motor vehicle accident when he was a passenger. He also sustained a fractured collar bone and hip bone when struck by a truck in a MVA in which he was a pedestrian. He could not recall more specifics about this accident.

PERSONAL HISTORY:

He was born in Indianapolis. His parents were married. He never knew his father because prior to his birth, his father died of a gun shot wound. He was

reared by his mother and moved to Nashville, TN with her when he was age 14-15. He was the youngest of his mother's 2 children. He has a step father. He said, "My childhood was sheltered...I was a Parochial School...Holy Angels...grades 2-5...then public schools." He went to the 11th grade at Broadripple then moved to TN and did not continue in school. He did not obtain a GED. He said that he can read and write. He had no military duty. He had Job Corps training for one year in WI. He has not been in prison. He had 2 previous arrests according to his Criminal History. He said that he has worked a security guard and he has his own business. He said that his business includes "campaign supports...strategies for the US Senate."

MENTAL STATUS EXAMINATION:

He was a black male who said that he was 5 ft 6 in tall and weighed 150 pounds which he said was down from 185 pounds that he weighed prior to his arrest. He had short black hair, brown eyes and a mustache. He was unshaven. He was alert, cooperative and overly friendly for the jail environment. He was loquacious providing rambling intellectual responses to questions. However, when questions of clarification or specifics were asked he avoiding providing the requested information. He was grandiose, superficial and had poor reality expectations. He said he had an IQ of "198 to 200." He described writing the prosecutor from jail and offering services to the prosecutor for a political campaign. He denied have hallucinations. He denied cyclic mood and sleep changes. He was able to abstract a proverb. He was oriented. His memory or recent and remote events was intact. He was able to name the current

president and spouse. He had difficulty performing simple calculations. He was not able to determine the correct change from a dollar for a purchase. He was not able to correctly subtract serial 7's from 100. He said that he "was not very good in math."

He understands the charges against him. He understands that if he is found guilty that he could receive a significant sentence. He understands the Criminal Proceedings. He was able to provide reasonable definitions of the roles of the Judge, Jury, Witnesses, Prosecutor and Defense Attorney.

DIAGNOSTIC IMPRESSION:

1.) Delusional Disorder Grandiose Type 297.1

2.) Probable Malingering demonstrated by excessive control of the exam through verbosity, avoidance of specific information when requested, curious attempts to engage the Prosecutor and bizarre letters to his Defense Attorneys.

PSYCHIATRIC OPINION:

It is my opinion, based on reasonable medical certainty, that this individual, does have comprehension sufficient to understand the nature of the proceedings. He is able, in spite of his mental disorder to aid his attorney in his defense in accordance with I.C. 35-36-3-1.

Furthermore, it is in my opinion, based on reasonable medical certainty, that this individual , in spite of his mental disorder was of sound mind at the time of the alleged offenses. He was able to appreciate the wrongfulness of his conduct at that time in accordance with I.C.35-41-3-6.

Sincerely,

/s/ Ned P. Masbaum, M.D.
Ned P. Masbaum, M.D.

NPM/em

Dwight William Schuster M.D.
1016 Tuckahoe
Indianapolis, Indiana 46260
(317) 259-1584

The Honorable Gary L. Miller, Judge
Superior Court of Marion County
Criminal Division, Room Five
City-County Bldg.
Indianapolis, Indiana 46204

December 31, 1999

Dr. Dwight W. Schuster's Report (12/31/99)

RE: Ahmad Edwards
Cause Number: 49G05 9907 CF 121975

Dear Judge Miller:

Pursuant to your appointment I have examined the above named defendant as to his competency to stand trial and as to his soundness of mind at the time of the alleged offense. My examination was carried out in a private room at the Marion County Jail in Indianapolis under satisfactory conditions and it was supplemented by a review of the Probable Cause Affidavit, an interview with his mother and grandmother and a review of lengthy letters written by the defendant.

The defendant was informed of the nature of the examination and he was told that his statements were not confidential. He expressed understanding of those facts and he was willing to continue with the examination. He identified himself and stated that he was 26 years of age with a birth date of January 29, 1973. He gave me his home address including the correct zip code.

Mr. Edwards went into great detail about events in July, 1999 but nothing about what happened at the Parisian's Department Store on July 12, 1999, other than to say that he did have "the shoes" when arrested. He stated that he had been apprehended by "a store detective" outside the store which caused him to react and that he shot his gun "because "he had attacked me and was hitting me". He stated that he was licensed to carry a gun because he worked in the field of law enforcement, namely, security work.

Past History and Family history given by Mr. Edwards included that his general health has been free of serious illnesses and accidents. He said his father had died in 1976 after being "mugged and shot 15 times". His mother and sister now live in Phoenix, Arizona and he alleged that his sister has "an addiction to drugs". He told me he was accepted in a magnet program in a local High School and went for three years. Then his mother moved and he decided to get a GED. He did not give details about his time in school and what problems he might have had. He said he returned to Indianapolis in 1992 and had worked for different Security companies since then. He denied having had any mental illness or any treatment. He said he used to drink for recreation and that he had one arrest for Public intoxication. He denied any drug problems and said he had never experimented with drugs. He gave a convoluted accounting of his arrest in July, 1998 for Criminal Trespassing and said he thought he should have been placed on Probation so that he would have has a mentor, "some one mature to relate to". He reported that he was not receiving medicine in Jail although he did receive paid medicine after being shot in the leg on July 12, 1999.

Mental Status examination on December 14, 1999 revealed a well nourished and developed man who was alert, coherent and cooperative. He spoke clearly and was very polite. His thinking was organized but obsessively detail with stilted use of words and phrases. A number of his statements were unusual and appeared grandiose. For example he said "I'm keeping a Journal (in Jail). I believe I have some solutions for World's problems". Also he stated "my being shot by a Federal agent will keep me from participating in the Olympics in Judo". There were no bizarre delusional statements or any unusual affect as are found in Schizophrenia. His intelligence was judged to be good but hampered by what appeared to be a learning disability. This was particularly noted in reading his lengthy letters to his attorney and to the Prosecuting Attorney. They were filled with spelling and grammatical errors as well as convoluted sentence structures. Mr. Edwards displayed good understanding of Court room officials and their duties and basic concepts of a trial and its consequences. He was well oriented and did not show any gross defects in attention span and memory.

I spoke with his mother in Phoenix, Arizona who described her son as "high strung". She said he had a high IQ. but that he did have a Learning Disability. She said he had never been examined or treated for mental illness. She said he had been turned down for Social Security Disability. She did not provide me with much detail about his family life and early development. She did say that his sister is receiving Haldol for emotional problems and that Ahmad might have interpreted the Haldol as his sister being "addicted". I also talked with his grandmother in

Indianapolis who referred me and my questions to Mr. Robert Hill, one of his attorneys.

In summary my examination of Ahmad Edwards led me to two diagnostic impressions. I believe that he does have a mixed Learning Disability classified as a Developmental Expressive Writing Disorder and Expressive Language Disorder as shown by his patterns of using erroneous and inappropriate sentences both verbally and in writing, but more marked in writing. A second diagnosis is that of Delusional disorder, Grandiose type. This condition is manifested by the individual believing he or she has great, but undiscovered talents with delusions of inflated worth, power and knowledge. These delusions are not bizarre and in general the individual does not show disorganization of personality. These conditions may make it difficult for Mr. Edwards to communicate satisfactorily with his attorney, but he does know he is charged with a crime and he understands the legal procedures associated with his trial. His delusional disorder impairs his judgment such as in his selection of Security work and carrying a gun.

I believe Mr. Edwards is in need of psychiatric treatment although his condition is difficult to treat He is potentially dangerous to others.

OPINION:

As a result of my examination it is my opinion with reasonable medical certainty that Ahmad Edwards is competent to stand trial at this time. I believe he was of unsound mind, in the legal sense of that term, on or about July 12, 1999 in that he was suffering from a mental

disease which impaired his appreciation of the wrongfulness of his conduct.

Sincerely,

/s/ Dwight W. Schuster M.D.
Dwight W. Schuster M.D.

NEUROPSYCHOLOGICAL EXAMINATION

Patient Name: Edwards, Ahmad
Date of Examination: February 23, 2000
Referral Source: Diane Abel and Robert Hill, Attorneys at Law

MEDICAL HISTORY:

This is a 27-year-old, right handed man who reports that he is ambidextrous. The accuracy of this is unclear. He also reports that he stopped at the 11th grade, and that he has a history of being diagnosed with dyslexia in approximately the 7th grade. It should be noted at this point that the reliability of this patient in terms of reporting this history is quite suspect. He appears to be consistently confused, and it also is entirely possible that he confabulates secondary to memory loss. For example, in one interview he reported a different name for his girlfriend that he had immediately prior to the crime for he is currently incarcerated, and in another interview he gave an entirely different name. This does not appear to be purposeful or intentful, but reflective of either a significant neurologic, psychiatric, or combination of both. He does have some consistent reports, however, which may be more reliable. He has been seen by Dr. Dwight Schuster and Dr. Ned Masbaum, both of whom felt he had a delusional disorder, grandiose type.

The patient also has a history of a motor vehicle accident with a loss of consciousness on September 13, 1995. Apparently he was, according to the patient, en route to elope with his girlfriend, when his car went under a semi-tractor trailer and then the trailer rolled over the car. Again, the reliability of

this report is unclear, but he was taken to Methodist Hospital Trauma Center. At the time of arrival at Methodist he had a Glasgow Coma Scale of 14 out of 14. It was noted that according to medical records he had an approximate five-minute loss of consciousness and he was incontinent of urine. He was apparently unrestrained. His head struck the windshield. Interestingly, medical records report that it was a head-on collision with the semi-tractor trailer. It was noted that in the emergency room he was alert and oriented times three, but had a wandering gaze when not focusing on the examiner's finger on visual examination. He had a scalp laceration apparently in the right frontal region. CT studies of the head showed soft tissue and scalp swelling of the right frontal region with negative midline shift or bleed. He had a diagnossis of closed head injury and acute alcohol intoxication and scalp laceration with repair. He also had a fracture of his ribs. He was seen in follow-up with Methodist Hospital approximately 13 days later for removal of sutures and it was noted that he also had significant difficulties with range of motion with his neck.

This patient was also apparently hit as a pedestrian, by his report. It is impossible to determine in interview with him when this occurred. He reports that after this accident his "right leg drew up." He also reports that he lost his job at that time because of increased fatigue and decreased range of motion in his leg. He reports that he broke his left collarbone in this accident. He reports that there was no loss of consciousness.

By way of history, he apparently has a mother who is living in Phoenix. His father died in approximately 1974 to 1976. He apparently was shot in a drug deal, according to Mr. Edwards' report. He has a sister who was apparently recently diganosed with AIDS and is schizophrenic. There is apparently a long family history of major psychiatric illness. School records from Broad Ripple High School suggest that at least in 1987 his grades were mostly Fs with two Cs. Testing done with apparently the Iowa Test of Basic Skills in March 1988 shows that he was mostly in the 3rd to 5th grade for all levels of academic functioning, and at that time he was in the 9.6th grade.

NEUROPSYCHOLOGICAL FINDINGS:

In consultation with this patient, it is noted that he is quite tangential, expansive, and disorganized in his verbal output. He initially starts off with some strcuture, but then quickly decompensates. It is noted in the file that he has written extensive and disorganized letters to a variety of people which are delusional in nature and as previously diagnosed certainly grandiose.

With respect to his pedestrian accident, Mr. Edwards reports that he was hit at 71st and Michigan Street when he was crossing the street. He said that he broke a collarbone and his hip and back. He is unable to reliably tell where he was hospitalized. At this time, he reported that this was in 1993 or slightly before. He also reports a motor vehicle accident, again in 1993. He reports that he had a loss of consciousness and hit the windshield. He reported that he was with his girlfriend and they were eloping. Mr. Edwards reports that he was unconscious until he was hospitalized, although this may have represented posttraumatic amnesia rather than loss of consciousness. He reports that he was in the hospital for four to five hours and then released. He spontaneously reports that he often gets these two accidents confused.

Mr. Edwards goes on to say that after these two accidents "nothing was going right." He reports that he became very depressed and was very concerned about his sister, who was apparently using drugs and prostituting in his apartment. He said that life had been going well prior to the accident, and that things were "spectacular." When questioned about his arrest, he said that life prior to this time "was mind-boggling." He apparently had set certain goals for himself, which probably reflected some grandiose delusion, and then his sister had been diagnosed with AIDS and a "mental illness." Apparently his sister relocated to Indianapolis and was living with him intermittently and also was using drugs. She also apparently lived with his grandmother, who then according to Mr. Edwards had a stroke secondary to stress one week prior to the robbery. His sister apparently had significant financial difficulties and

he was trying to help her pay some of her bills. He reports that she began prostituting to make money. Apparently he then started to break up with his girlfriend secondary to the stress. He was "trying to be a man in life for the first time" with his girlfriend and help with her three children, but things were falling apart by his report. He indicated, "her pimps were trying to get him to do things to pay her debts" with

reference to his sister. In the meantime, Mr. Edwards also indicated, exemplary of his delusional system, that he had decided to build three to four "dream homes." Then he goes on to say that he was considering suicide the day before the offense for which he was arrested. He apparently locked himself in his apartment and held his gun to his head while he was talking to his ex-girlfriend on the phone. He reports that he hung up and loaded the gun and sat down on the couch, and the gun went off and apparently the bullet went through the couch and the wall, according to his report. He reports that he began crying, and that his ex-girlfriend showed up at the door. He reports feeling very confused at that time. In interview he also reports that his sister was dating a man who was apparently involved in his father's murder and that he was watching his sister have sex with his father's murderer prior to this event. He reports seeing her naked with five to six men in his apartment, and reports that this was "totally confusing" to him. Mr. Edwards also reports that since he has been in jail he has encountered one of the indviduals who shot his father and apparently

in his mind this individual told him that if he sought revenge the same thing would happen to him.

When asked about the crime, he begins talking about his role as an agent for entertainment stars and that he was going to the mall to sign a contract with a talent. He was, according to Mr. Edwards, going to meet him in the mall in the morning and when this individual did not appear he became distraught. He reports that he was feeling ashamed. He reports that he was going to use money from this contract to pay off his sister's debts. He reports that he does not remember stealing the shoes. It is interesting to note in some previous records, that this patient had some obsession with shoes, incidentally. He reports that he had purchased some other things at another store with his girlfriend's credit card, although this is again confusing because he previously indicated that he had broken up with his girlfriend. He indicates that he remembers next people jumping on him and he thought it was related to the fact somehow that this famous artist had not shown up at the store. He remembers saying, "please let us get out of this busy street." Interestingly, he said the feeling or emotion was like "I was a virgin and the heat and I couldn't see." He reports that he was blanking in and out and at this time when the crime was occurring he felt as if he saw only black. He said, "I hated that I was out of control – a third party saying to myself – Ahmad, what are you doing." He said everything thereafter was "in slow motion." He also reports some out-of-body experiences, in particular after the pedestrian accident, and he endorses some olfactory hallucinations, although again the reliability of this report is unknown.

On examination, this patient demonstrated very good persistence and put forth a good effort. He seemed to comprehend directions. His mood was appropriate and in fact was outgoing and friendly. A valid determination of his neuropsychological status was obtained.

This patient was given the Reitan-Klove Sensory Perceptual Examination, the Finger Tapping Test, the Grooved Pegboard Test, the Controlled Oral Word Association Test, the Aphasia Screening Test, the Paced Auditory Serial Addition Test, the California Verbal Learning Test, the Rey Complex Figure Test, the Ward Short Form of the Wechsler Adult Intelligence Scale – R, the Wide Range Achievement Test-3, the Wisconsin Card Sorting Test, the Stroop Test, and the Minnesota Multiphasic Personality Inventory-2 as well as the Millon Clinical Multiaxial Inventory – 3.

On measures of gross motor speed of the upper extremities, it is noted that this patient is within normal limits to slightly above average on the dominant right upper extremity as well as on the left, nondominant upper extremity. Fine motor dexterity and coordination, however, is noted to be slightly slower than might be expected on the upper right extremity, although within normal limits. However, he was noted to be mildly impaired for the left, nondominant upper extremity.

On the Wide Range Achievement Test –3, this patient obtained a reading score of the 12th percentile or a

grade score of 7, a spelling percentile of the 1st percentile or a grade level of 4, and arithmetic percentile of 2 with a grade score of 4. These are consistent with his previous academic levels of performance. On examination for sensory and perceptual functions, it is noted that he is within normal limits for tactile, auditory and visual sensory confrontation examination. Examination for aphasic symptomatology is within normal limits. He did have some significant difficulties with mental calculations. Generative phonemic naming is noted to be at the 89th percentile. On the Wechsler Adult Intelligence Scale – Revised, he obtained a Verbal Intelligence Quotient of 88. This places him at the low end of the average range. On the Wechsler Adult Intelligence Scale – Revised he obtained a Performance Intelligence Quotient of 99. This resulted in a Full Scale Intelligence Quotient of 91.

On examination for attention and concentration functions, he is within normal limits for short-term auditory attention span. His general cognitive speeds are intact, although it is noted that he is extremely impulsive with an inability to inhibit prepotent responses. This would seem to represent a disinhibition and an inability to maintain cognitive set. Consistent with this finding, he had significant difficulties and was markedly impaired on a measure of his ability to serially add digits under the constraints of time. His performance in this respect was markedly and severely impaired. On mesaures of cognitive fleixibility that are less sensitive, he falls into the lower end of the average range which is probably consistent with his premorbid level of intellectual functioning. On measures of memory, it is noted that he is at the 81st percentile for immediate

recall of short paragraph-length material read to him auditorially and at the 84th percentile for delayed recall. Similarly, his immediate visual memory is at the 90th percentile and at the 89th percentile for delayed recall. When given a task of new verbal learning in the form of a 16-word list to recall over five trials, he was ultimately able to acquire 14 out of 16 in immediate recall, but he also began significantly perseverating. He was not aware that he was perseverating. On immediate recall he was able to retain 14 of the items that he had learned, and on long delay free recall he was able to retain 12. He still showed some mild propensity towards perseveration. Cueing did not facilitate his recall and interestingly recognition memory was perhaps mildly impaired. On a more complex task of spatial learning and memory, it is noted that his immediate recall was at the 65th percentile and his 20-minute delayed recall was at the 65th percentile. On a measure of ability to generate hypotheses to solve novel problems, it is again noted that he is perseverative and had some difficulty maintaining cognitive set.

This patient was given the Minnesota Multiphasic Personality Inventory – 2 as well as the Millon Clinical Multiaxial Inventory – 3. On both of these inventories he demonstrated a "fake good" profile where he denied any kind of psychological difficulties whatsoever. Therefore, these inventories were not helpful with clinical diagnosis.

SUMMARY AND RECOMMENDATIONS:

1. The results of the neuropsychological examination point towards a patient who clearly has a compromise of brain functions. He has decreased motor speed on the left upper extremity for fine motor dexterity and coordination and he is extraordinarily impulsive, disinhibited and has impairments of his ability to maintain cognitive set. He has difficulties learning new cognitive strategies and is extremely slow in this respect. He is perseverative on a variety of measures, again demonstrating his impairment of cognitive set. These findings are consistent for patients who have frontal lobe injuries, particularly orbital and mesial surfaces of the frontal lobes.

2. He clearly presents with a delusional disorder, grandiose type. He does appear to be hypergraphic, and he does endorse olfactory hallucinations, so it might be important to rule out partial complex seizures.

3. As noted from clinical interview, this patient is extremely tangential and decompensates in the course of a conversation. He is going to have considerable difficulty participating in his legal defense. These are neurobehavioral changes that are seen with frontal lobe brain damage. Additionally, I suspect this patient also has a major thought disorder, such as schizophrenia, and it should be noted that he has a very strong family history in this regard. Additional psychological testing is required to make this differential diagnosis.

4. This patient clearly needs neuropsychiatric treatment that should be inpatient. He needs pharmacological treatment as well as group psychotherapy to help with his behavioral disturbances. Clearly the penal system does not provide this kind of intervention and he is likely to at least not benefit from incarceration and probably will deteriorate.

5. With respect to the crime for which he has been arrested, it would appear that his behavior reflects the effects of frontal lobe brain damage, including impulsivity with decision-making. It is also obvious that he was under a great deal of stress at the time this offense occurred, and it seems likely that he was psychotic at the time of the offense secondary to the interactive effects between frontal lobe damage and significant environmental stress. He uses his delusional system to cope with profound feelings of inadequacy, and his very strong family history of psychiatric illness certainly provides for a predisposition towards a major psychiatric illness that is now made even worse by frontal lobe dyscontrol.

Thank you for asking me to evaluate this most complex patient.

/s/ Lance E. Trexler, Ph.D.
Lance E. Trexler, Ph.D., H.S.P.P.
Clinical Neuropsychologist,
Director of Neuropsychological Services and
Clinical Assistant Professor;
Clinical Director,
Center for Neurological Rehabilitation
Community Hospitals Indianapolis

/s/ Ahmad Edwards

07/03/00

MR. AHMAD EDWARDS)
VS.)
THE STATE OF INDIANA)
CAUSE NO.)
49G059907CF121975)

<<stamped>> FILED JUL 06 2000 <<signature>>
Sarah M. Taylor CLERK OF THE MARION
CIRCUIT COURT

STATE TRIAL TRANSCRIPTION
AND STENOGRAPHIC REPORTING

Provide state trial transcription of trial judge exercising jurisdiction and stenographic reporting denoting files the defendant "Mr. Ahmad Edwards" recorded testimonyes and statments of the defendant causeing the court judge in proceedings to record order representation of the defendant action.

Defendant shall have factual basis to first waiver application of trial extension of time counter affidavits

Habeus corpus law reasonable care rule by the court having inquired the defendants order. Magistrate or special judges pursuant to inorders annotations Indiana Code title (35) thirtyfive; a county lawful legal officers, legal machinery and means for carrying out the powers and performing the duties pertaining to it as a quasi municipal corporation. 164 S.W. 2d 753, 757.

The dignity of the Marion County Sheriff Department mail room officers responsible for the collection and distribution of all U.S. mail for

the Marion County Jail and the ninteenth judicial circuit and the "clerk of court" in the Marion Supirior Court Division in the State of Indiana.

Therefor the defendant Mr. Ahmad Edwards testimony and statments on the months days and years as to:

1) The ninth month on the sixteeth day of the year ninteenhundred ninetyfive – throught to the ninth month on the seventeeth day of the year ninteenhundred nindyfive. (09/16/95 – 09/17/95)

2) The seventh month on the thirdth day of the year ninteenhundred ninetyeight – throught the ninth month on the ninth day of the year ninteenhundred ninety. (07/30/98 – 09/09/98)

3.) The seven month on the twelveth day of the year ninteenhundred ninetynine – throught the six month on the thirdteenth day of the year twothousand (07/12/99 – 06/13/2000)

4.) The seven month on the seventh day of the year twothousand (07/07/2000 -- .....)

Of misdemeanors and felonys matters court recordings used as transcript of the oral matters and as stenographic objections thereof occurring during the hearings proceeding of the defendant Mr. Ahmad Edwards transcrips or stenographic equipment shall be selected in respects to the judge.

Shall trial consist on any date continuing later than the seventh month of the fifthteeth day in the year twothousand (07/15/2000) the accepting jurisdiction of rule 4(A)(C) adoption statutes of the 42 U.S.C. § 1983 briefly will support factual basis in claim for administrative relief tobe supplied by the court.

The defence respectfuly hopes that this courts "clerk of court" urgently makes the commitment required for the needs of the defendant "Mr. Ahmad Edwards" requested hearin as motion.

Legal request of;

/s/ Ahmad Edwards
Mr. Ahmad Edwards
40 South Alabama St
Indianapolis, IN 46204

(3-I)
#494657
(S.S.I) (SSN Redacted)
(D.O.B) 01/29/73

SS: Fill

<<stamped>> FILE

<<stamped>> FILED JUL 20 2000 <<signature>>
Sarah M. Taylor CLERK OF THE MARION
CIRCUIT COURT

<<stamped>> RECEIVED MAY 09 2000 BY:

<<written>> Ahmad Edwards – CAUSE # 99-121975

Dear; Judge Pration

I am honored to have the chance to write you and your staff. My wildest dream of the ciritical issues that confront us as young people today. Seem to be changing the values of importance for the newer generation that are destroying our world the modern host of assumptions and beliefs are what premeate our lives as youth in todays marketplace.

To a great extent these corporate values are synonymous with industrialism, which separates land from people, and personal values from the values of commerce. The business world has become a type of addiction to money, fame, and power. Like all addictions. It is a way of not feeling and when business doesn't feel it is at least amoral, almost always harmfull. If business economics is the study of how we add values to raw matererials and processes I propose that we as youth can not add values unless we first have them. This youth communit based organization I have designed will bring a courageous hartfelt sense of connectedness

Important new values of logical coherence to commerce they'll not only bring these coherences to business but first to their own lives – in other feeling

of morale values. These feelings for morale are not merely an organization rules for good value they are what will drive business forward in this century to come if it's to fulfill it's role as restorer of our planet our community and our faith in the youth again.

We cannot be afraid of the words young people in the community...without them we are limited treating only the social educational, and political circumstances that do the vicitimizing...we are in...a national crisis and we must work at more than an individual level. The history of other crises shows us that. We are hampered as youth, by a barn-raising mentality that likens major problems to the simplistic gathering

of hardy pioneers coming to the assistance of a frontier neighborhood in distress. The increasing sophistication of this city's society is now requireing leadership able to see beyond the first line of trees at the edge of the clearing and into the forest of national need.

We hear much these days of the coming to battle with our neighborhood problens yet we ignore the consequences of having half our youth population face that battle with out any help at all. It is not difficult these days to believe that the promise of America made to the youth for a better futcher may be hereinafter dispensed selectively...left to their own devices how can you realy help us crystallize an participate in a solution as an public offical? First you must inspire the local strencth or effect of elective conceptual idea originating interest to form the powers that help youth of this city in every county understand

Such idea and believe firmly in them and reward those who can help support the goal of helping those youth meat the status quo of the city after a difference can be made is well know become an subsidiary to the view of those who do wish to support the youth several major insoluble emergence of issues. Escalating the problems that produce threatening unpleasnt calculations of youthfull disgraceing discourse and their statistics I "Ahmad Edwards" have reflected in this lack of services offered to the young people of this city the clear means to do away with the problems that plague the youth.

Supporting the goal of helping youth meat "the status quo" of quality state of being is not the only activism I support that helps the youth. I also have made a practical social applicability to end the disturbing thoughts and emotions between youth resembling any negative energy betaked by a friend

It's a resource of provenience for the special interest and is an exclusive focus of the mayor " and the multiple interest of deputy mayor "Susan Brooks"

I Ahmad Edwards pray to be considered and chosen to the process of this organization that admits young people voluntarily. Then no one will force them to join. No one will force them to attain a desire to be successful with the existing situation of the environment their individual attention as well as their conscious mind will make that choice clear.

Intentionaly the careful judgeship of opinion is reconciled by public officals for assurance of health and normal production advantageing these original concepts of positive intelectual ideas to set the

impressions that ring with energy and truth. Thust encouraging youth to imagin questions that ask people of all ages about music media, friendships, famiy-life computers, food, global differences, business education, English, social studies, and beinning adult hood, giving – the direction to change

hostilities – exchanging those negative energy capacity for action constructive in to positive presence of affirming ability to learn and understand how to deal with new or trying situations by becomeing intelligent to what is correct politically, symbolic of professional corporation, and physicaly educational through the formes of entertainment all the way up to practices of tasks concerned with corporate fortune.

"For example" – if I'm able to teach our youth to learn to control their networking competition efficiency will allow them to make honist mistakes and profit from them...puting them in a class of distinctions for privileges...of broad social reform and internationalism (relating to or appealing to the section on exercising power throught exactitude auxiliary for commendable more favorable relation with international politics.)

Such idea's young people should believe firmly in and we as competent or commissioned citizens should reward those who can support the goal of helping young people meet their goals. After a difference can be made is well know become an subsidiary to the view of those who do wish to support the youth out of the several major insoluble emergence of issues escalating the problems that produce threatening unpleasant calculations of youthful disgraceing

discourse and unrelaxing rate of un-abundart statistics.

Help support the young people of this town by first helping our-selfves reach the quality practical of social applicability to end what is realy revoking our young peoples succession

I pray that you can help me;

/s/ Ahmad Edwards
Ahmad Edwards

CAUSE NO. 49G059907CF121975
CRIMINAL DIVISION RM.5

STATE OF INDIANA	)	SS: IN THE MARION
	)	SUPERIOR COURT
COUNTY OF MARION	)	CRIMINAL
	)	DIVISION, ROOM V
STATE OF INDIANA	)	THE HONORABLE
VS.	)	GARY L. MILLER,
	)	JUDGE
	)	CAUSE NO.
<<written>>	)	49G059907CF121975
Ahmad Edwards	)	<<written>>

<<stamped>> FILED AUG 16 2000<<signature>>
Sarah M. Taylor CLERK OF THE MARION CIRCUIT COURT

COMMITMENT ORDER
INDIANA DEPARTMENT OF MENTAL HEALTH

TO THE MARION COUNTY SHERIFF:

This cause came to Court for hearing on Court's own Motion for Psychiatric Examination alleging the Defendant has insufficient comprehension to understand the nature of the criminal action against him and the proceedings therein. Evidence was submitted on the oral testimony and written reports of two competent disinterested psychiatrists. Court did find that the Defendant does not have sufficient comprehension to understand the nature of the criminal action against him and the proceedings therein and to make his defense.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED, that the Defendant, <<written>> Ahmad Edwards, be committed to the care and custody of the Indiana Department of Mental Health for evaluation and treatment, and the Indiana Department of Mental Health is hereby directed to file a written

report to this Court within a period of ninety (90) days stating therein its findings as to whether or not there is substantial probability that he will attain the capacity to understand the proceedings in the foreseeable future.

IT IS FURTHER ORDERED by the Court that Indiana Department of Mental Health continue to evaluate <<written>> Ahmad Edwards, and if he is unable to understand the proceedings and assist in the preparation of his defense within six (6) months after the date of his admission to a psychiatric institution, the Department of Mental Health shall institute regular commitment proceedings under IC 16-14-9.1.

/s/ Gary L. Miller
Honorable Gary L. Miller, Judge
Marion County Superior Court
Criminal Division, Room Five

Date: <<written>> 8-16-00

<<masthead>>

Indiana Family & Social Services Administration
"People helping people help themselves"
Frank O'Bannon, Governor
State of Indiana

Office of General Counsel
MS27 402 W. WASHINGTON STREET, ROOM W451
INDIANAPOLIS, IN 46204-2744
Katherine Humphreys, Secretary

November 2, 2000

The Honorable Gary L. Miller
Marion Superior Court
(Criminal Division #5)
200 E. Washington St., Room W-305
Indianapolis, IN 46204

RE: Ahmad Edwards
CAUSE NO: 49G05-9907-CF-121975

Dear Judge Miller:

We are enclosing the Confinement Authority designating Logansport State Hospital – Isaac Ray Unit as the appropriate facility to receive custody of Ahmad Edwards.

Please instruct the individual responsible for transporting Ahmad Edwards to contact Bonnie Richter, (219) 722-4141, Logansport State Hospital – Isaac Ray Unit to arrange a mutually agreeable admission date.

Sincerely yours,

/s/ Katherine Gerber Gregory
Katherine Gerber Gregory
Deputy General Counsel
Family and Social Services Administration

KGG/bls

Enclosure

cc: Bonnie Richter, Logansport State Hospital – Isaac
Ray Unit

Equal Opportunity / Affirmative Action Employer
<<Seal of State of Indiana>>

STATE OF INDIANA	)	IN THE MARION
COUNTY OF MARION	)	SUPERIOR COURT
	)	(CRIMINAL DIVISION
	)	#5)
VS.	)	SS:
Ahmad Edwards	)	CAUSE NO:
	)	49G05-9907-CF-121975

<<stamped>> FILED NOV 08 2000<<signature>> Sarah M. Taylor CLERK OF THE MARION CIRCUIT COURT

CONFINEMENT AUTHORITY
LACKING ABILITY TO UNDERSTAND
AND ASSIST

Pursuant to I.C. 35-36-3 and the Order of this Court dated August 16, 2000, (in which the defendant was found to lack the ability to understand the proceedings and assist in the preparation of his defense), the Director of Mental Health (by his designee) designates the Logansport State Hospital – Isaac Ray Unit as the appropriate institution for the defendant's confinement for further evaluation and treatment.

As soon as said defendant attains the ability to understand the proceedings and assist in the preparation of his defense, the Superintendent of the above-named facility is to certify that fact to the Court. If the defendant has not already been returned to the Court for the criminal trial, then within **ninety (90) days** of the defendant's admission to the above-named facility, the Superintendent thereof shall certify to the Court whether there is a substantial probability that the defendant will in the foreseeable future attain the ability to understand the proceedings

and assist in the preparation of his defense. If there is not such a substantial probability, the Superintendent or his designee shall initiate regular civil commitment proceedings. In any event, if the defendant has not been returned to the Court for the criminal trial in **six (6) months**, the Superintendent or his designee shall initiate regular commitment proceedings.

In no event may the defendant be retained pursuant to this Confinement Order for a period longer that SIX (6) MONTHS, although he may be retained for a longer period if so ordered in civil commitment proceedings.

Director's Designee

/s/ Katherine Gerber Gregory
Katherine Gerber Gregory
Deputy General Counsel
Family and Social Services Administration
<<written>> 11/2/00

<<masthead>>

Indiana Family & Social Services Administration

"People helping people help themselves"

Frank O'Bannon, Governor
State of Indiana
LOGANSPORT STATE HOSPITAL
DIVISION OF MENTAL HEALTH
1098 S. STATE ROAD 25
LOGANSPORT, IN 46947-9699
219-722-4141
FAX: 219-735-3414
TDD: 219-732-0069
Katherine Humphreys, Secretary

<<stamped>> FILED MAR 14 2001 <<signature>> Sarah M. Taylor CLERK OF THE MARION CIRCUIT COURT
<<written>>
16 Mar 01

Have Mr Edwards returned to M.C.J. Set this matter for pretrial 27 Mar 01 @ 9:00 AM <<signature>> GWH

March 9, 2001

Honorable Gary L. Miller
Judge, Marion Superior Court
Criminal Division #5
200 E. Washington St. Room W 305
Indianapolis,IN. 46204

Re: Ahmad Edwards
Cause #:49 G05-9907- CF 121975

Dear Judge Miller:

By my signature below, I certify that, according to the report filed by Steve H. Berger, M.D., that Mr. Edwards has attained the ability to understand the proceedings and assist in the preparation of his defense.

Pursuant to IC 35-36-3-2, we would respectfully request that your court enter an order directing the sheriff to return the defendant to your county jail, along with his personal belongings, at

your earliest possible convenience. Please direct your county sheriff to notify the Isaac Ray Treatment Center no less than 24 hours prior to the anticipated transport of this defendant. This notice will allow appropriate medications, money, clothing, etc. to be ready upon arrival of county personnel.

Sincerely,

/s/ Jeffrey H. Smith
Jeffrey H. Smith, Ph.D.
Superintendent

cc: Steve Sarris, IDMH Legal

I swear and affirm, under the penalties of perjury, that the foregoing statements are true to the best of my knowledge and belief..

<<written>> 3-13-01 /s/ Jeffrey H. Smith

J.C.A.H.O. Accredited
Equal Opportunity / Affirmative Action Employer
<<Seal of the State of Indiana>>

Indiana Family and Social Services Administration
Logansport State Hospital
Logansport, IN

Competence To Stand Trial Report

<<stamped>> FILED MAR 14 2001 <<signature>>
Sarah M. Taylor CLERK OF THE MARION
CIRCUIT COURT

Patient: Ahmad Edwards #48948
DOA: 12-12-00
DOB: 01-29-73
DOE: 02-2-7-01
DOD: 02-27-01

IDENTIFYING DATA:

The patient is a 28 year old man.

DESCRIPTION OF EXAMINATION AND CAUSE NUMBER:

On February 27, 2001, I performed an evaluation of this patient regarding his competence to stand trial. At the beginning of the examination, I explained to him the purpose of the examination, and that it would not be confidential. I explained that my report would be sent to the judge. With that understanding, the patient agreed to proceed with the examination.

The patient was found incompetent to stand trial in Cause #49G05-9907-CF-121975, by Judge Gary L. Miller in Marion County Superior Court, Criminal Division #5 on August 16, 2000.

DATA REGARDING COMPETENCE TO STAND TRIAL:

The following is the information given to me by the patient during this examination.

The patient does have a criminal charge pending against him. The charge against him is, "Attempted murder, battery, criminal recklessness, theft." The pleadings available to the patient include, "Guilty, not guilty." If the patient is found guilty, the maximum sentence he faces is, "125 years" and the minimum sentence he faces is, "Not sure." The other sentences that the patient might get include, "Temporary insanity." If the patient is found guilty, the sentence he is most likely to get is, "Class A 30 years, plus Class C 10 years, plus criminal recklessness 18 months, plus theft 18 months, this equals 42 years."

The patient does have an attorney. The attorney is a pubic defender. The role of the patient's attorney is, "Assist me in my defense."

The attorney on the other side of the patient's case is called, "Prosecuting attorney." The role of the prosecuting attorney is "Defends the public safety and assist counsel of the plaintiff."

The role of the judge is, "Makes sure the rules of the court are followed and assist the jury in pronouncing a verdict." The role of the jury is, "Seek for the truth."

What happens in a trial is, "It's where they hear the facts of allegations and hear strategies of the parties." The patient's turn to talk during a trial is, "Whenever I'm asked a question or put on the witness stand."

If, during the trial, the judge overrules and objection, that means, "Judge didn't find enough facts in the opposing parties view." If the judge sustains the objection, that means, "He agrees with the issue." If a witness is testifying against a patient, and the

patient sees that the witness is lying, the patient should, "Let my attorney know."

Ahmad Edwards #48948
03/01/01
Page 1

The patient is familiar with plea bargaining. Plea bargaining is, "When prosecutor negotiates with the defense to settle the dispute. It's a waiver of my rights."

The patient's plan for his legal strategy regarding the charges against him is, "My attorney already got the insanity defense, I guess we will go with that for the time being."

The events leading to the charges presently against the patient were, "The commission of a crime." If the patient is asked on the witness stand if you committed a crime, then he would testify, "That I had done it. It's a fact that I discharged my firearm."

PRESENT SYMPTOMS:

The following is further information given by the patient in today's examination.

The patient sleeps "Not too good. I don't sleep that well. My leg injury makes it hard." His appetite is, "Healthy." The patient states, "My concentration is off a little bit since the collision." He is able to remember things. He denies loss of interest in his usual activities.

The patient denies feeling depressed. The patient reports a history of a suicide attempt last July and also earlier the same year. The patient denies homicidal thoughts or any history of homicide attempts.

The patient denies hearing things that are not there, seeing things that are not there, others following or spying on him, others listening in on his thoughts, others controlling his thoughts, his listening in on other peoples' thoughts, his controlling other peoples' thoughts, or the television watching him.

The patient denies lack of energy. He denies feeling worthless. He denies feeling slowed down.

With regard to symptoms of mania, the patient denies inappropriate euphoria, manic sleep pattern, pressured speech, manic spending pattern, or grandiosity.

The patient is a drinker of alcohol. He denies being an alcoholic. The patient is a user of street drugs. He denies ever having been treated for alcoholism or substance abuse.

The patient is physically healthy. He reports a history of an irregular heartbeat. He denies any other serious illnesses in his history such as cancer, diabetes, or epilepsy.

PERSONAL HISTORY

The patient has never been married. He has no children. He lives with his grandmother.

The patient dropped out of school after the 10th grade due to a learning disability. He reports having attended additional training through Job Corp for business administration for 6 months. He has not attended any college.

The patient was last employed with an airline in Phoenix, AZ, as a bellhop.

Ahmad Edwards
#48948
03/01/01
Page 2

MENTAL STATUS EXAMINATION:

The following are the answers given by the patient today to the questions I asked him in a mental status examination.

Today is, "Tuesday, February 27, 2001." I am, "Ahmad Edwards." This place is, "Logansport State Hospital, Isaac Ray Treatment Center." The presidents in reverse order are, "George Bush, Jr., Clinton, George Bush, Sr., Ronald Reagan, and Jimmy Carter." Serially subtracting 3 from 20, "20-17-14-11-8-5-2".

If the patient were walking down the street, and found a letter lying next to a mailbox, he would, "Pick it up and see if it was correctly addressed and then put it in the mailbox. If it was not correctly addressed, take it to the post office." If the patient were in a theater and saw the curtains on fire, he would, "See if an atttendant was close enough to tell and help people get out." If someone said to the patient that the grass is always greener on the other side of the fence, that person would be trying to say, "Things are always the same." If someone said, don't cry over spilled milk, that would mean, "Put things aside, don't worry over what is done."

The patient is able to name 3 objects after 5 minutes. The patient is able to repeat 7 digits forward and 4 digits backward. With regard to calculations, "5+6=, "11." 5x6=, "40." 6-5, "1."

Five large cities are, "Dallas, New York, Los Angeles, Indianapolis, and Detroit." Choosing between New York and Los Angeles, the one that is further east is, "New York." The distance from New York to Los Angeles is, "About 2000 miles."

The reason that people pay taxes is, "Finance Federal Government." The reason that games have rules is, "So the game is played fairly."

The similarity of a bush and a tree is, "Both are plant life." Their dissimilarity is, "One is taller than the other." The similarity of a coat and a hat is, "Both are items of apparel." Their dissimilarity is, "One is designed for your head, that's a coat. One is designed to cover your body." The number of legs on a horse is, "4." The shape of the window on that wall is, "Square." The colors of the American flag are, "Red, white and blue."

MEDICATIONS:

The medications the patient presently takes are Benadryl on an as needed basis for sleep. No psychiatric medications.

OBSERVATIONS:

The following are my observations regarding this patient.

The patient is alert, oriented, appropriate, calm, cooperative, likable, and friendly. The patient related to me in a normal fashion during today's examination. The patient is free of psychosis, depression, mania, and confusion. He appears able to think clearly. At this point the patient appears to be psychiatrically normal.

The patient is able to carry on a normal conversation and answer questions appropriately. The patient's behavior in today's examination was calm and cooperative. The patient demonstrates during today's examination that his motivation is self-serving and not self-defeating.

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McGARRY CRITERIA:

The following are the McGarry criteria for competence, and my determination of whether this patient fulfills each criterion. My determination is based upon my judgment regarding the information gathered during today's examination.

1. Does the patient have the ability to appraise the legal defenses available to him? Yes.
2. What is the level of the patient's unmanageable behavior? Low.
3. What is the quality of the anticipated manner in which the patient will relate to his attorney? Cooperative.
4. Does the patient have the ability to plan a legal strategy? Yes.
5. Does the patient have the ability to appraise the roles of the various participants in the courtroom proceedings? Yes.
6. Does the patient understand the procedures of the court? Yes.
7. Does the patient have an appreciation of the charges against him? Yes.

8. Does the patient have an appreciation of the range and nature of the possible penalties he faces? Yes.

9. Does the patient have the ability to appraise the likely outcome of the charges against him? Yes.

10. Does the patient have the capacity to disclose to his attorney available pertinent facts surround the offense? Yes.

11. Does the patient have the capacity to challenge prosecution witnesses realistically? Yes.

12. Does the patient have the capacity to testify relevantly? Yes.

13. Does the patient manifest self-serving motivation or self-defeating motivation? Self-serving motivation.

CONCLUSIONS:

The following are my conclusions regarding this patient, based upon the above history and findings.

1. It is my judgment that this patient presently does have comprehension sufficient to understand the nature of the criminal action against him. He is adequately able to describe the charges against him, the possible sentence he faces, the roles of the various people in the courtroom, the process of plea bargaining, and the part he plays in his trial.

2. It is my judgment that this patient presently has comprehension sufficient to make a defense regarding the criminal action against him. He is free of psychosis, depression, mania, and

confusion. He is able to think clearly. He is able to answer questions appropriately. He is able to carry on a normal conversation. He is able to relate to me appropriately in today's examination. He is able to put his thoughts into words.

Ahmad Edwards #48948
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Page 4

3. Based upon above 2 conclusions, it is my judgment that this patient presently is medically competent to stand trial.

_____

Neil Wilkey, MD
IRTC

/s/ S Berger, M.D.
Steven H. Berger, MD.
Staff Psychiatrist, Isaac Ray Treatment Center
Logansport State Hospital
Board Certified Forensic Psychiatrist
02-27-01, dkr
Finalized: 03-01-01

Ahmad Edwards #48948
03/01/01

MR. AHMAD EDWARDS	)	IN THE MARION
	)	SUPERIOR COURT
V.	)	ROOM 5 CRIMINAL
THE STATE OF INDIANA	)	DIVISION.
		CAUSE NO:

<<stamped>> FILED MAY 29 2001 <<signature>>
Sarah M. Taylor CLERK OF THE MARION
CIRCUIT COURT

"MOTION TO DISMISS CRIMINAL CHARGES"
AND DISCHARGE THE DEFENDANT
ON CRIMINAL RULE 4.[C]

The defendant, Mr. "Ahmad Edwards" hereby notifies the court and respectfully request the dismissal and discharge of the defendant on the grounds of the following good and sufficient resons.

[Continued on page 2 of 8]

[cont - page 3]

"MOTION TO DISMISS CRIMINAL CHARGES"
AND DISCHARGE THE DEFENDANT ON C.R.4[C]

1] The defendant, in this cause Mr. "Ahmad Edwards" injunctioned receiverships of the court to determine to expedite trials within this cause by the exerciseing of his right to affects thereto the United States Constitution statute of Amendment One Article Six therein states for all persons whome may be permissive in criminal prosecutions shell enjoy the right to a speedy and public trial,

[Continued on page 3 of 8]

[cont - page 4]

"MOTION TO DISMISS CRIMINAL CHARGES"
AND DISCHARGE THE DEFENDANT ON C.R.4[C]

2] Assignment for a defendant in jail extensive discretion and exercised by the defendant of this cause Mr. "Ahmad Edwards." The rules of criminal procedure Rule 4[C] defendant discharged. No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year from the date the criminal charges, against such defendant is filed, or from the date of his arrest on such charge, whichever is later; rules of criminal procedure. Criminal rule 4[C] designated as initial classification by the defendant, Mr. "Ahmad Edwards" whome arrived at the Marion County jail in Indianapolis Indiana on

[Continued on page 4 of 8]

[cont – page 5]

"MOTION TO DISMISS CRIMINAL CHARGES"
AND DISCHARGE THE DEFENDANT ON C.R.4[C]

2] 07-21-99 untill 09-29-00 thereon for more than one year. For a total number [428] days in general. By written stipulation of the justice information system of Indianapolis. Awaiting trial-held for authority verdict thereon for more amended circumstances as effect by judgment, on 3-27-2001 where no continuance was had on the defedant, "Mr. Ahmad Edwards" motion, so held on recognizance for [53] added days of the courts calendar as to date 05-25-2001.

[Continued on page 5 of 8]

[cont – page 6]

"MOTION TO DISMISS CRIMINAL CHARGES"
AND DISCHARGE THE DEFENDANT ON C.R.4[C]

3] Any extensive additional proceedings of law by the right of the Fourteenth Amendment of the United States Contitution witch states "No state shall make or enforce any law which shall abridge the privileges of citizens of the United States nor deprive any person of life, liberty, or property without due process of law. Witch sequenced the convenience of justice by the federal rules of civil procedure rule 71A.[A] applicability of other rules. Such as federal rule of civil procedure rule 83.[B] procedures when there is no controlling law. To subscribe the dismissal

[Continued on page 6 of 8]

[cont – page 7]

"MOTION TO DISMISS CRIMINAL CHARGES"
AND DISCHARGE THE DEFENDANT ON C.R.4[C]

3] of the defendant, "Mr. Ahmad Edwards" exesting criminal charges and discharge the defendant from the Marion County jail in Indianapolis Indiana at 40 South. Alabama Street. In an cell housing numbered block [4-B]. Under the gallery number [494657] as his exclusive right as the accused to a speedy and public trial, by an impartial jury of the state Indiana which district haveing been previously ascertained by law of the criminal procedure rule 4.[C] discharge for delay in criminal trials not sufficient in time to try him.

[Continued on page 7 of 8]

[cont – page 8]

"MOTION TO DISMISS CRIMINAL CHARGES"
AND DISCHARGE THE DEFENDANT ON C.R.4[C]

The defendant, moves the court of this cause to order the dismissal and the discharge of the defendant Mr. "Ahmad Edwards". On the grounds that it is in violation of the jurisdiction of this states constitution and laws of the criminal procedure rules. Criminal rule 4[C] defendant discharged. With corporation incorporated under the laws of the United States Constitution of America Amendment One Article Six.

cc:

/s/ Ahmad Edwards
Ahmad Edwards

"MR. AHMAD EDWARDS"	)	IN THE MARION
	)	SUPERIOR COURT
V.	)	ROOM 5 CRIMINAL
THE STATE OF INDIANA	)	DIVISION
	)	CAUSE NO: 99121975
	)	

<<stamped>> FILED JUN 26 2001 <<signature>> Sarah M. Taylor CLERK OF THE MARION CIRCUIT COURT

Pro Se

"MOTION OF PERMISSIVE INTERVENTION"

Now comes the defendant Mr. Ahmad Edwards thereof as an submissison under the counsel of Mark Jones of the Marion County Public Defender Agency by disqualification by the honerable "Gary Miller" of Mis. "Diana Able" and Mr. Bob Hill ruling pendency expires by rules of the trial procedure trial rule 53.2

[Continued on page 2 of 21]

Time for holding issue under advisement. As permanent records to be kept together with its orders thereto shall be kept as the matter interested by this parties oualification of the trial rule 24[B] permissive intervention. As the defendant Mr. Ahmad Edwards in this cause accepts to proposed as the following:

[A.]
In the year ["1999"] nineteen hundred and nindy nine. The defendant Mr. Ahmad Edwards applyed for a job in the fifth largest shopeing mall in Indiana. To relize the existence of a genuine issue as to an material fact by interrogatories

[Continued on page 3 of 21]

of the county Marion in Indianapolis, Indiana to help cure the vital stictics, in witch negligence was being apoximated as the cause of the exacerbation of the young American citizens of the United States in Indianapolis, Indiana injury.

[B]

The defendant Mr. Ahmad Edwards wishes to offer the material relevant thereto the discovery to be entered as evidence to the trial court of admissions, interrogatories, and testimony mentioned and/or physically attached to support the affidavit that is present to and/or

[Continued on page 4 of 21]

for the trial court's consideration.

[C.]

The exhibits of the defendant Mr. Ahmad Edwards qualifys as proper evidence to be taken into consideration by trial court to specifically state there is genuine issue of material fact that could be fatal, to require the trial court to designate the issues of claims upon which the defendant Mr. Ahmad Edwards finds as genuine issue as to material facts to succed in makeing specific findings in regard to an summary judgment that necessary to mandate.

[Continued on page 5 of 21]

p.5] "MOTION OF PERMISSIVE INTERVENTION -CONT"

[D.]

The issues of fact effects the young American citizens of the United States in Indianapolis Indiana as they fall within class of documents to be considered and only examined for legal propositions for facts to support a motion for summary judgment based upon the defendant Mr. Ahmad Edwards defense of 'res judicata' as memorandum has been published ruling on this motion of permissive intervention.

[Continued on page 6 of 21]

p.6] "MOTION OF PERMISSIVE INTERVENTION -CONT"

[E.]

Ruling on a motion for summary judgment trial court may rely on briefs submitted by the defendant Mr. Ahmad Edwards as constrained to rely on the pleading, depositions, answers to interrogatories, admissions on file, affidavits and testimony claiming the defendant Mr. Ahmad Edwards was insufficient mentaly to establish reson to withstand the alleged commission.

[F.]

Under this trial rule 24 [B] permissive intervention. The trial court

[Continued on page 7 of 21]

p.7] "MOTION OF PERMISSIVE INTERVENTION -CONT"

[F]

is required to permitt anyone to intervene in an action determining whether there question of law or fact in common that relies for ground of claim. Upon any statute or executive order administered by a federal, state govermental officer, agency, agreement issued made pursuant to the statutes of executive administrative order.

[G.]

Required is an summary judgment as the defendant Mr. Ahmad Edwards is in a statutory provision that

[Continued on page 8 of 21]

p.8] "MOTION OF PERMISSIVE INTERVENTION -CONT"

[G.]

has retroactive effect, as an presumptive statue limiting the defense, impairing his rights acting, to increase the young American citizens of the United States in Indianapolis Indiana liability for past conduct, and impose duties with respect. C.A.10[Colo.] 1999. Statutes imposing liabilities.

[H.]

Agency's interpretation of statute with which it has been charged with administering and which has been reduced to regulation is tobe fully accepted by court as long as

[Continued on page 9 of 21]

p.9] "MOTION OF PERMISSIVE INTERVENTION -CONT"

[H.]

Congress has not directly spoken as to precise question at issue and interpretation proffered by acency is a permissible one. C.A.4 [W.VA.] 1999. Erroneous construction; conflict with statute.

[I.]

An action is being brought by the members of an unincorporated association named Ambergress & Zenagencies imposing conditions as proposed omission properly to counsel. Young American citizens of the United States in Indianapolis

[Continued on page 10 of 21]

[I.]

Indiana by law as an class action [trial rule 23]. Directed by Mr. Ahmad Edwards as the President and his excutives with the right to claim an recover or regain any possession entitled to them devise by the law given to orgainzations. With data compilation for relief the orgainzational agency Ambergress & Zenagencies shell sufficient or otherwise thereto the civil procedure constitute compromise for the young American citizens of the United States in Indianapolis Indiana. Tobe completely transfered to the control of the members. Acquired by the power of the excutive directors

[Continued on page 11 of 21]

[I.]

of the orgainzational agency Ambergress & Zenagencies excutives.

[J.]

The defendant Mr. Ahmad Edwards has the right to the orginazition "Ambergress & Zenagencies" exclusive board of directors membership upon the surrender of his siginter as the chief excutive officer under the agency Ambergress & Zenagencies orginazitional staute. To act according to the terms of the orginazitional agency by-laws and security pledges. In any court that may take judicial

[Continued on page 12 of 21]

p.12] "MOTION OF PERMISSIVE INTERVENTION -CONT"

[J.]

notice of a fact [the rules of evidence rule 201 [F]. Time of taking notice.

[K.]

The defendant has the right to revise charitable contributions to mankind that, ratify articles of the orinazitional agency Ambergress & Zenagencies by-laws that continue it's incentive program. As the majority ruled him in favor of a vote for the exclusive board of directors chief excutive officer chair.

[Continued on page 13 of 21]

p.13] "MOTION OF PERMISSIVE INTERVENTION -CONT"

[L.]

An interest in the purposes dealings of the young American citizens of the United States in

Indianapolis Indiana made by the defendant Mr. Ahmad Edwards has been consistent with the truth within his statement as to the purport of the documents to exchange commission from oral to written assertion intended by the defendant Mr. Ahmad Edwards as the cheif excutive officer of the organizational presence of the agency Ambergress & Zenagencies, as an assertion.

[Continued on page 14 of 21]

p.14] "MOTION OF PERMISSIVE INTERVENTION -CONT"

[M.]

Quotations, tabulations, lists, directories, published compilations, are called to attention upon examination of the discovery of the relied direct contractual agreements of the subject of history, science and art, admissions presently in an time of need for an agency or an organization to sought after the defendants Mr. "Ahmad Edwards" discharge.

[N.]

The methods provided by statute and or the rule of the organization

[Continued on page 15 of 21]

p.[15] "MOTION OF PERMISSIVE INTERVENTION -CONT"

[N.]

Ambergress & Zenagencies genuine issue as to an material fact of that in a civil trial court upon all necessary elements of a claim would not support the contrary that specifically is pointing out insufficiency prior to an subsequent criminal trial newly

discovering materal evidence which could with reasonable diligence produced to constitute tribunals inferior to the Supreme Court the United States Constitution of America Artical One [1] Section 8. [9].

[Continued on page 16 of 21]

p.16] "MOTION OF PERMISSIVE INTERVENTION -CONT"

Therfore the defendant Mr. "Ahmad Edwards" and chief excutive officer of the exclusive board of directors of the orginazition Ambergress & Zenagencies witch claimed him to be with the genuine issue of material fact based upon the familiarity acquired for purposes to better mankind in litigation distinctive for the young American citizens of the United States in Indianapolis Indiana characteristics such as appearance substance abuse, internal patterns of thinking and distinctive behavor disorders taken into conjunction with other circumstances under the identification of first hand

[Continued on page 17 of 21]

p.17] "MOTION OF PERMISSIVE INTERVENTION -CONT"

problems of the state of Indiana city of Indianapolis as the opinion of the general public voiceing the circumstances in conversations filed in a public office, purporting public record. That have created negligence and suspicion concerning the defendant Mr. "Ahmad Edwards" and chief excutive officer of the exclusive board of directors of the orginazitional agency Ambergress & Zenagencies authentic genuine issue of materal fact. To process system as evidence describing the use of the orginazition "Ambergress &

Zenagencies" to produce an accurate result with methods provided by this orginazitional statute

[Continued on page 18 of 21]

p.18] "MOTION OF PERMISSIVE INTERVENTION -CONT"

or rule however in the discretion of the court that showes truthfulness and not untruthfulness as to the character of the defendant being examined for the purpose to stop the young American citizens of the United States in Indianapolis Indiana from committing murder, rape, robbery, criminal confinement or any crime involving dishonesty. Equivalent to pardon the defendant Mr. "Ahmad Edwards" and the annulment orginazitional agency Ambergress & Zenagencies based on the finding of innocence with adjudications admissible upon the faces of this or any trial court admission necessary

[Continued on page 19 of 21]

p.19] "MOTION OF PERMISSIVE INTERVENTION -CONT"

for a fair determination of the genuine issue of material fact as the defendant Mr. Ahmad Edwards renders evidence adopted as the effect of an orginazitional agency that shell negligently drive these stated concerns, process, systems, plainly with out the body and mind of the defendant Mr. "Ahmad Edwards" wherefore the defendant and the orginazition agency named Ambergress & Zenagencies demands the order of special verdict and interrogatories to the jury trial abolished [trial rule 49]; to the due care of responsible civil procedur where his evidence may justify a finding of wilfulness

[Continued on page 20 of 21]

p.20] "MOTION OF PERMISSIVE INTERVENTION -CONT"

as to the complaint for conversion the orginazition agency Ambergress & Zenagencies specificly plained performance of contract to convey the jurisdiction of vital apoximated exacerbation of the young American citizens of the United States in Indianapolis. The United States Constitution of America should the post facto law be violated will also be impaired on the obligation of contracts granting the defendant Mr. "Ahmad Edwards" title of nobility as to affects thereto the United States Constitution statute of Amendment One Article One Section [10] Ten. By law depriveing this right shall violate the United States Constitution of America as the defendant Mr. "Ahmad Edwards"

[Continued on page 21 of 21]

p21] "MOTION OF PERMISSIVE INTERVENTION -CONT"

personal right to due process of law. The United States Constitution statute of Amendment Forteen Section [1] One

Respectfuly the defendant,

cc:

Mr. "Ahmad Edwards"
40 South Alabama Street
Indianapolis, IN – 46204

p.21] "MOTION OF PERMISSIVE INTERVENTION -CONT"

Personal right to due process of law. The United States Constitution Statute of Amendment Fourteen Section [1] One.

/s/ Ahmad Edwards

Mr. Ahmad Edwards
The Defendant

40 South Alabama Street
Indianapolis, IN 46204

Collective traditional class;

I'm not going to introduce or include a judges time as an "short-lived insert". In edition to membership adequately apocaling truly. Set with representing all Americans in this age victories includeing every citizens practical or maybe even smaller basic ones. Side tobe taken broadly in sanctuary of the court room...telling you this is missing rules. But is applying human exacuation to prove on occasion successful representatives properly come sooner for the damages and proxy

Yet I'm tired of small overpriced minded American citizens runing, justifying big minded thoughts. To the out of order stage. To their own living larger procuring relations capitaly. "Indy is a nonsense –on the ball type of town, and once this actions granted in good faith. I shell be stating to all members

searching [with me] through the courts constitutional rights the matters that terminat qualified competition that wants to become "spokesmen" officialy commenting on my own. Incriminated against my own eurges of force. Or communicat to receive relief for it is the informal that incriminates monumentaly. Such an compulsion of personal individual rights commonly the small minded men fail. When agreements are actioned to amend. In adviseing one personal privilegs that requir administrative warrants that would afford to regulat broad spacious homes for the calling of better family distinguished with "clubs" being built in their name. Square loveing the presidents of their dining room as the life it-self reaches new volumes.

And the children shell live glorious within in raiment needlework. This be their fortune instead of poverty.

Authorized by laws debts incurred with payment. Struggle to establish "no more". One eight is disability simply as business guidlines. Congress may associate naturaly three fourths, -im to pioneer and send home from school in "Harvard" spending something around $600,000 in over head for the maintenance of appearances for the compulsory Boston society there is not that much to do maybe the "opera" – the great vessel of social salvation the general dynamics of monopoly creates a clear degree. Boady body building will give me years of competition in the social science of clubing civilly – "amusingly-so".

"Entertaining companionable hospitable pleasant looking young man shouldn't fear competition anyway," I'd say.

From my own state-of-the art design aircraft...to the systems headquarters in "New York City." The industrie electronics center for economic. As one forth with great satisfaction at the least. The inherits friends "my-God" – that comes from the profund effect on traditional lodges. That dealing sharply with welth and not talking about it's forms.....becomeing their autocrat at the breakfast-tables.

Society journal fortunately at Harvard well write very precise "professor of class amoung other things, I am.

The dynastic proportion of two thirds well be as the house of standard along with the famly idea to raise the proper child or children.....all to encourage our

city of young people. To help make hundreds of intellectually successful characters. With the help of your office they might understand to do what is right with confidence in the event of seeing that nothing is hopeless seting goles [by "your" personal best]. As this may help them out in lifes they live further into haveing what ever they imagine every day when they wake up....go to school and do the right thing for all the rest of the year. I know I can and well express what it means to surrender at life and finally be able to use considerble enterprise and imagination with gusto.

A greater willingness has laid me to write you from this place and an progression to essentially set young people with an out look on everything I turned away when I was begaing – without. Truly is the cause of - what-I-became. Once I came back to Indianapolis by bus in an harmed state of depression with major problems "at that".

Intellectually successful characters. Have no doubts about whome or what will be. But only discover how to achieve ideals faceing the world head on in hopes to maybe help relieve someone to learn that in the finish of good things you do never be overwhelmed yet again become resigned to amaze!

Be the "Protestant" in the specialized treatment I care to have to help the young people with "as consciousness". Be the president of the student body university of life. This programs has made of a few more judges wanting to know what young people are doing, on the enterprise with their imagination. Just starting in the service to stop and creat for the ends-to-meet. So that they can ask for your viewpoints to have other respect their opinions, aptitude of

promising goles they set. Your spiritual support helps besides all others

Situations of the young
people or necessary, vital,
and practical;

/s/ Ahmad Edwards
Ahmad Edwards

NED P. MASBAUM, M.D.
FORENSIC PSYCHIATRY
P.O. BOX 3010
CARMEL, INDIANA 46082 USA
TELEPHONE (317) 846-7727 FAX (317) 575-1898
TOLL FREE (888) 203-7746
Web Site: www.FORNPSYCH.com

October 3, 2001

Honorable Grant Hawkins, Judge
Marion Superior Court Criminal 5
W-305 City County Building
200 East Washington Street
Indianapolis, Indiana 46204

Re: Ahmad Edwards B/M 1/29/73 Cause No. 49G05-9907-CF-121975

Dear Judge Hawkins:

In accordance with your order, the above individual was seen for a Psychiatric Reexamination.

PURPOSE OF EXAMINATION:

Provide an opinion regarding soundness of mind at the time of the alleged offense(s).

Provide an opinion regarding Competence to Stand Trial.

CHARGES AGAINST THIS INDIVIDUAL:

Count I: Attempt Murder, Class A Felony, 7-12-99
Count II: Battery, Class C Felony, 7-12-99
Count III: Criminal Recklessness, Class D Felony, 7-12-99
Count IV: Theft, Class D Felony, 7-12-99

QUALIFICATIONS OF EXAMINER:

Enclosed please find a copy of my resume that states my qualifications to provide a psychiatric opinion regarding this individual.

DATE OF EXAMINATION:

10-3-2001

LOCATION OF EXAMINATION:

Marion County Jail, under satisfactory conditions.

DURATION OF EXAMINATION:
Approximately one hour.

RECORDS AND INFORMATION AVAILABLE FOR REVIEW:

1.) Copy of the Probable Cause Affidavit and Charging Information.

2.) Copy of this individual's Criminal History.

3.) Copy records from Logansport State Hospital

4.) Copy of my prior Forensic Psychiatric Examination, dated 12-22-99

Re: Ahmad Edwards B/M 1/29/73 Cause No. 49G05-9907-CF-121975

IDENTIFICATION DATA:

This individual provided the following information:
NAME: Ahmad (NMN) Edwards
AGE: 28
DOB: 1-29-73
SSN: (SSN Redacted)

This individual was advised that this was a court ordered non-confidential psychiatric examination and agreed to proceed.

ACCOUNT OF THE ALLEGED OFFENSE(S) BY THIS INDIVIDUAL:

He said that he was crossing the street (crime scene) when he was pursued by an "undercover officer." He said, "I had a bag with me...I assumed he was a mugger...I was in the middle of the street...the bag ended up flying on the street...from the bag came a pair of shoes and shirt and firearm. The firearm was mine. It was licensed and registered...I was in the middle of the street...I fired a shot in the air, a warning shot for the traffic to stop...I fired another shot...I was told in a situation like this, fire at the individual, at his feet...I struck him with the bullet. Another individual said 'I'm going to hold you here...at that point, I fired another shot at his feet and struck him in the ankle...a Federal Officer picked me up...I ran into a parking garage...shot me in the thigh."

PAST MEDICAL HISTORY:

See report of prior exam. Medical records from Logansport State Hospital revealed that he was found to be ICST and admitted there on 12-12-2000 and discharged 2-27-01. No diagnosis was established. He was not treated with psychotropic medication. He was discharged with a Psychiatric Opinion of Competence to Stand Trial. He is not receiving psychotropic medication at this time in jail.

PERSONAL HISTORY:

See report of prior exam. He also said that he was diagnosed with "Dyslexia" in the 4th grade and was in Special Education "rest of life."

MENTAL STATUS EXAMINATION:

He was a black male with his hands handcuffed behind his back. He said that he had asked for deadlock due to conflicts with other inmates. His head was shaved. He was alert and reasonably cooperative. He was less hyperactive than his prior exam. He was also less grandiose. He rambled and described events in the third person, "The bag ended up flying into the street." However, his speech was not disorganized. He had no delusions nor hallucinations. However, he said, "The day prior (alleged offenses) I was hallucinating dark clouds...contemplating suicide...as if death was above me...I placed a firearm in my mouth and tried to pull the trigger 4 times...due to problems with my sister...I couldn't sleep." He was able to partially abstract a proverb. He was oriented. His memory for recent and remote events was reasonably intact. He was able to name the current President. He was able to perform some simple calculations. He could determine the correct change from a dollar for a purchase. He had difficulty subtracting serial 7's from 100 and serial 3's from 20. He was able to draw simple geometric designs that revealed no neurologic deficit.

He understands the charges against him. He understands the charges are serious. He understands that if he is found guilty that he could receive a significant sentence. He understands the Criminal Proceedings. He was able to provide reasonable definitions of the roles of the Judge, Jury, Witnesses, Prosecutor and Defense Attorney.

DIAGNOSTIC IMPRESSION:

1.) Delusional Disorder, Grandiose Type 297.1, improved

2.) History, Probable Malingering

PSYCHIATRIC OPINION:

It is my opinion, based on reasonable medical certainty, that this individual, in spite of his disorder, does have comprehension sufficient to understand the nature of these proceedings. He is able to aid his attorney in his defense in accordance with I.C. 35-36-3-1

Furthermore, it is my opinion, based on reasonable medical certainty that this individual was of sound mind at the time of the alleged offenses. He was able to appreciate the wrongfulness of his conduct at that time in accordance with I.C. 35-41-3-6.

Sincerely,

/s/ Ned P. Masbaum, MD

Ned P. Masbaum, M.D.

NPM/em

NED P. MASBAUM, M.D.

FORENSIC PSYCHIATRY

P.O. BOX 3010

CARMEL, INDIANA 46082 USA

TELEPHONE (317) 846-7727 FAX (317) 575-1898

TOLL FREE (888) 203-7746

WEB SITE: WWW.FORNPSYCH.COM

RESUME

EXPERIENCE:

* Private Practice of Psychiatry, Indianapolis Metropolitan Area since 1969.
* Member of the Medical Staff of Clarian * Methodist Hospital.
* Court appointed Forensic Psychiatrist in Marion County Courts and Courts throughout Indiana.
* Forensic Psychiatric Testimony in Federal Courts.
* Former Lieutenant Commander and Chief of Psychiatry, United States Naval Hospital, Portsmouth, New Hampshire 1967-1969.
* Forensic Psychiatric Testimony in Military Courts-martial cases.

EDUCATION:

* A.B. Indiana University, 1960.

* M.D. Indiana University, School of Medicine, 1963.
* Rotating Internship Wishard Hospital (formerly Marion County General), 1963-1964.
* Residency in Psychiatry, Indiana University Medical Center, 1964-1967.
* Current and Regular Recipient of the American Medical Association Physician's Recognition Award in Continuing Medical Education.

QUALIFICATIONS:

* Board Certified by the American Board of Psychiatry and Neurology in Psychiatry, 1970.
* Board Certified by the American Board of Psychiatry and Neurology in Forensic Psychiatry 1994.
* Licensed to Practice Medicine in the State of Indiana since 1963.
* Member of the American Medical Association, Indiana State Medical Association, Indianapolis Medical Society, American Psychiatric Association, Indiana Psychiatric Society, American Academy of Forensic Sciences, American Academy of Psychiatry and the Law.

REFERENCES:

* Available on request.

MR. "AHMAD EDWARDS"	)	IN THE MARION
	)	SUPERIOR COURT
V.	)	ROOM NO.5
THE STATE OF INDIANA	)	CAUSE NO.
	)	49G059907CF
	)	121975

<<stamped>> FILED APR 22 2002 <<signature>>
Sarah M. Taylor CLERK OF THE MARION CIRCUIT COURT
<<written>> 23 Apr 02 <<signature>> GWH

"PETITION": "MR. AHMAD EDWARDS"

[p.1]

I Mr. Ahmad Edwards appearance in court is detrimental to my well-being. Im being held for a type of civil commitment that will take additional hearing for good cause I would an will voluntary commit for treatment personaly.

However the issue or concern ~~wod~~ now, involes

[continued on page; 2 of;]

"PETITION": MR. AHMAD EDWARDS

[p.2]

services [inmates] are] not afforded here at the Marion County jail that participate; in the judicial circut of the Marion County superior court at; 200 E Washing ton St. in; Indianapolis Indiana; 46204; program excluding [inmates] from hearings evaluated by phyical health professionals that have identified the inmate from regular visits;

[continued on page; 3 of ;]

"PETITION": MR. AHMAD EDWARDS

[p.4]

with stated case of continued pain

I Mr. Ahmad Edwards totally will be responsible for a action if there is significant guilty to be committed to me Mr. Ahmad Edwards as a result of defenses loss for haveing participated in trial court procedure in such an ~~contu~~ contnues exagerated state of extreme pain. As I Mr. Ahmad Edwards at; the Marion County jail [cell block 2-T] 40. South Alabama Street in; Indianapolis Indiana; 46204; shall

[continued on page; 5 of;]

"PETITION": MR. AHMAD EDWARDS

[p.5]

ask as the petitioner for the purpose of discrimination not ~~a~~ due to my physical disability the court to elicit perpetuated and established my [Mr. Ahmad Edwards] petition of grievance and deliver me Mr. Ahmad Edwards to the most appropriate physical health service advocacy of the courts public poiicy.....

I affirm, under the penaltics for perjury, that the foregoing representation is true.

/s/ Ahmad Edwards
Mr. Ahmad Edwards

file c.c.

MR. "AHMAD EDWARDS"	)	IN THE MARION
V.	)	SUPERIOR COURT
THE STATE OF INDIANA	)	ROOM NO. 5
	)	CAUSE NO. 49G05
	)	9907CF121975

<<stamped>> FILED APR 22 2002 <<signature>>
Sarah M. Taylor CLERK OF THE MARION CIRCUIT COURT
<<written>> 23 Apr 02 <<signature>> GWH

"PETITION : "MR. AHMAD EDWARDS"

[p.1]

1. I Mr. Ahmad Edwards expects to be in process an individual may petition as being incapable of managing human needs.
2. Therefor I Mr. "Ahmad Edwards" condition substantialy; a physician Lance E. Trexler Ph.D., H.S.P.P. recommends by

[continued on page; 2 of; 4]

[cont-]PETITION:MR. AHMAD EDWARDS

[p.2]

2. An court determined reasonable inquiry the court to provide for my mental deficiency of a excessive undue duress; individual incapacity [as defined in I.C. 12-7-2-61] or order an guardianship.
3. As I Mr. Ahmad Edwards desires to consent to the civil commitment's as they require admissions for regular commitment at Logansport State Hospital ; 1098 S. State Road 25; Logansport Indiana; 46947 – 9699.

[continued on page:3 of; 4]

[cont-] PETITION: MR. AHMAD EDWARDS

[p.3]

4. The established state of mind of [I] Mr. Ahmad Edwards as to proceedings for regular commitment admission prejudice fails and withdrawals from trial rule 36 [B]. Certain of the rules of law, a person can commit to such as the trial rule 41. Sentences that decides action withheld not for order

5. Therefor form the legal will of courts that authorize an mental action to plead to the commitment to an state institution provisions of I.C. 12-7-2-61

[continued on page; 4 of; 4]

[cont-] PETITION : MR.AHMAD EDWARDS

[p.4]

'I affirm, under the penalties for perjury, that the foregoing representations are true.

/s/ Ahmad Edwards
Mr. Ahmad Edwards

"MR. AHMAD EDWARDS"	)	IN THE MARION
	)	SUPERIOR
V.	)	COURT ROOM 5
THE STATE OF INDIANA	)	CRIMINAL DIVISION.
	)	CAUSE NO:
	)	496059907CF121975

<<stamped>> FILED APR 23 2002 <<signature>> Sarah M. Taylor CLERK OF THE MARION CIRCUIT COURT

"DEFENCE OBJECTION"

[p.1]

I the defendant object so to be timely herein trials the public may be virtue of power against I the defendant Mr. Ahmad Edwards, as consultation intention to plead statute of constitutional duty I.C. 12-27-3-3.[1] [4] is thereof I.C. 12-27-3-2

[continued on page; 2 of; 3]

[cont- "DEFENCE OBJECTION"]

[p.2]

Therefore the defence objects, because of courts decisions that enforce it to be unconstitutional to decline to this right of the defendant Mr. Ahmad Edwards – but see, Brooks v. Texas, 381 F. 2d 619 [5th cir, Tex. 1967] as to the validity of an public trial being held illegaly – shall the times upon probable cause set the terms I the [as president] defendant of the elected public shall meet representatives dress codes of the agency titled Ambergress & Zenagencies manner provided by the motion for competnet dress coad

[continued on page; 3 of; 3]

[cont- "DEFENCE OBJECTION"]

[p.3]

Section; E [1][2][3]. Thereof for the states, [United] Memphis, New – Orleans young American citizens as subjects, shall there be member's after the powers discharged under the United States Constitution Article [V]. I as right to effective provision the defendant of such class stated claims.

"I affirm, under the penalties for perjury, that the foregoing representations are true.

/s/ Ahmad Edwards
The Defendant
Mr. Ahmad Edwards
[C.E.O.]

"MR. AHMAD EDWARDS"	) IN THE MARION
	) SUPERIOR COURT
V.	) ROOM 5 CRIMINAL
THE STATE OF INDIANA	) DIVISION
	) CAUSE NO:
	) 496059907CF121975

<<stamped>> FILED APR 23 2002 <<signature>>
CLERK OF THE MARION CIRCUIT COURT
<<written>> 23 Apr 02 << signature>> GWH

"MOTION FOR COMPETNET DRESS ~~COAD~~ CODE"
AGENCY FORM [9000]

[p.1]

The agent Mr. Ahmad Edwards by the agency powers of Ambergress & Zenagencies an orgainzational agency with the subtantial rights of the United States Constitution; as executive rule the means for young American citizens to use element, power and

[continued on page ;2 of ;12]

"cont- "MOTION FOR COMPETNET DRESS COAD"]

[p.2]

forsights for other young American citizens to take on penalties as to the orgainzational agencies foregoing conclusion drawn and found by young American citizens. Failing negligents thats classified as antiest-ablishment, therefor the agency's of Ambergress & Zenagencies or leaning not toward antiestablishment or their attitudes of standards that avoid authoritative apparel; as it is congressional intent the agency has

[continued on page; 3 of; 12]

[p.3]

interpretated the following statutory permissible construction:

Corporate Image. – for executive instinct of agency dress code includes the following rights:

[1] Representing the public in the public in the agency eye agent should dress conservatively

[2] Each branch, division office is exempted from part or all of the dress

[continued on page ;4 of ;12]

[2] code apon argument that are valid or suggesting other parts of the country and or offices in the world; or:

[3] Executives in charge of blue-collar workers should dress like the workers; or:

[4] Apon amateur opertions of nonverbal business that sales products or services to different citizens;

[5] The men and weman in marketing as well as executives in corporate

[continued on page ; 5 of: 12]

they shall follow the competnet dress code of comfortable traditional attire reflecting convention logical, conservative competent positive adulthood ; alone or by agency advocate guidance therefor this dress code is valid for classmates potential to use the powers of the United States Constitution Article IV, §4, thereof; or in:

Boston, New York, San Francisco

[continued on page ; 6 of ; 12]

[cont- "MOTION FOR COMPETNENT
[p.6] DRESS CODE"

1] Suit: dark gray without pinstripes;
2] Shirt ; wite
3] Tie : upper-middle class conservative

Atlanta, Dallas

1] Suit: light-colored
2] Shirt: wite
3] Tie: traditional
[with panache]

Jacksonville, Florida

1] Suit: mid-range gray
2] Shirt: blue
3] Tie : striped

[continud on page ; 7 of; 12]

[cont- "MOTION FOR COMPENTNT
[p.7] DRESS CODE"]

Salt Lake City
1] Suit: blue pinstripe
2] Shirt : white
3] Tie : conservative

Seattle, Portland

1] Suit: brown
Shirt : wite
2] ~~Shirt~~ : Tie: conservative

California, Hawaii
1] Suit : medium-range blue
2] Shirt: light blue

[continued on page; 8 of; 12]

[cont- "MOTION FOR COMPETNENT
[p.8] DRESS CODE"]

Tallahassee, Memphis, New Orleans

1] Suit: medium-range solid blue;
2] Shirt : wite;
3] Tie : maroon
[tie must be solid]

Chicago, Minneapolis, St. Paul

1] Suit : gray plaid:
2] Shirt : medium blue;
3] Tie : dark blue [tie must be solid]

[continued on page;9of;12]

[cont- "MOTION FOR COMPETNENT
[p.9] DRESS CODE"

South America

1] Suit: light-beige
2] Shirt : wite
3] Tie : dark beige

This is directed to the young American citizens of the United States: with being created for the value of

young Americans to call them to the offical offices delegations of business and thereof the United States

[continued on page ;10 of; 12]

so in so far as to direct all others a white shirt and conservative tie crosses all racial, age socioeconomic and or sex: proestablishment professional establishment associates whom may have dealing with this cause number: 496059907CF121975 ; on a regular basis, in an traditional manner of business as executives thereof the courts delegation or apon the continuals of this court

[continued on page; 11 of; 12]

their shall be an suit: made by any designer that dose not suit the unusual clothing of revolutions for the serious businessman and or businesswoman: of, beige and or brown in the summer

Werefor, the agency Ambergress & Zenagencies may provide law to help the young American citizen as agents we as an agency when speaking declarat-

[continued on page ;12 of;12]

ing powers discharged under the United States Constitution Article [5] Five Section [1] One, and thereof Amendments Twenty Section [3] Three proposed and ratified respectively in United States Conventions historicaly on April 26, 1933 therein the

United States Constitution and therefore order shall be the emphasised law herein.

'I affirm, under the penalties for perjury, that the foregoing representations are true"

/s/ Ahmad Edwards
Ahmad Edwards
The Defendant
[C.E.O.]

<<stamped>> FILED APR 15 2002 <<signature>>
Sarah M. Taylor CLERK OF THE MARION CIRCUIT COURT
<<written>> 12 Apr 02 denied <<signature>> GWH

4/10/02

"ORDERS TO THE CLERK"

I the defendant in the cause number 496059907CF121975 order the clerk of the Marion Circuit Court Mr. Taylor to no later than the supervision of times sessioned of [your] his offical office to the following:

1. Make copies of all exhibits offered and admitted into evidence of this cause above.

c.c. file

A party to this action
/s/ Ahmad Edwards
Mr. Ahmad Edwards

"ORDER OF REFERENCE"

[p.2]

Adjudged that the above-captioned matter be referred to "The Division of Mental Health" for services of developmental training with interest thereon at the Indiana family and social services administration in Logansport Indiana titled "central."

HONORABLE
GRANT HAWKINS
DISTRICT JUDGE
IN THE MARION
SUPERIOR COURT

c.c.file

MR. AHMAD EDWARDS	) IN THE MARION
	) SUPERIOR COURT
V.	) ROOM 5 CRIMINAL
THE STATE OF INDIANA	) DIVISON
	) CAUSE NO:
	) 496059907CF121975

"ORDER OF REFERENCE"

[p.1]

This action came on trial before the court and a honorable "Grant Hawkins" district judge presiding and the issues of mental health having been duly tried and the honorable "Grant Hawkins" district judge having duly rendered the verdict.

It is **ordered** and

[continued on page ; 2 of;]

"CONSENT TO JURISDICTION
BY A SUPERIOR COURT
MAGISTRATE JUDGE"

[p.2]

from a service provider at the Indiana Family and Social Services Administration in Logansport Indiana titled "Central" Apon Order of the Entry of "Final Judgment."

"I affirm, under the penalties for perjury, that the foregoing representation is true.

/s/ Ahmad Edwards
Mr. Ahmad Edwards

c.c.file

copies to:

Prosecuting
Attorney

MR. AHMAD EDWARDS	) IN THE MARION
	) COURT ROOM 5
V.	) CRIMINAL
THE STATE OF INDIANA	) DIVISION
	) CAUSE NO:
	) 496059907CF
	) 121975

<<stamped>> FILED APR 15 2002 <<signature>>
Sarah M. Taylor CLERK OF THE MARION CIRCUIT COURT

"CONSENT TO JURISDICTION
BY A SUPERIOR COURT
MAGISTRATE JUDGE"

[p.1]

In accordance with the provisions of I.C. 12-27-1 the undersigned party to the above-captioned criminal matter hereby voluntarily consent to health services of developmental training

[continued on page; 2 of; 2]

<<stamped>> FILED APR 15 2002 <<signature>>
Sarah M. Taylor CLERK OF THE MARION CIRCUIT COURT
Canon 3

A]

5. A judge should dispose promptly of the business of the court.

Indiana Rule of Court

STATE OF INDIANA	)	IN THE MARION
COUNTY OF MARION	)	SUPERIOR COURT
STATE OF INDIANA	)	SS:
VS.	)	CRIMINAL DIVISION,
AHMAD EDWARDS	)	ROOM FIVE
	)	CAUSE NO. 49G05-
	)	9907-CF-121975

<<stamped>> FILED APR 16 2002 <<signature>>
Sarah M. Taylor CLERK OF THE MARION
CIRCUIT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON DEFENDANT'S COMPETENCE TO STAND TRIAL

Comes now the Court on the SECOND SUGGESTION OF INCOMPETENCY filed by the Defendant's counsel and determines as follows:

PROCEDURAL HISTORY

1. On July 15, 1999, Defendant was charged in this matter with the offenses of Attempt Murder, Battery as a class C felony, Criminal Recklessness as a Class D felony, and Theft, a class D felony.

2. On December 7, 1999, counsel for Defendant filed a Combined Notice of Insanity and Defense & Petition for Examination to Determine Competence to Stand Trial after which this Court, Hon. Gary Miller presiding, appointed Dr. Ned Masbaum and Dr. Dwight Schuster to examine Defendant.

3. Dr. Masbaum filed his report of December 22, 1999, and later testified before Judge Miller as to his diagnostic impression and psychiatric opinion:

A. "Defendant suffered from Delusional Disorder Grandiose Type 297.1"

B. "Probable Malingering demonstrated by excessive control of the exam through verbosity, avoidance of specific information when requested, curious attempts to engage the Prosecutor and bizarre letters to his Defense Attorneys (sic).

1

C. "It is my opinion, based upon reasonable medical certainty, that this individual does have comprehension sufficient to understand the nature of the proceedings. He is able, in spite of his mental disorder to aid his attorney in his defense in accordance with I.C. 35-36-3-1.

Dr. Masbaum went on to opine that Defendant, again in spite of his mental disorder, was of sound mind at the time of the offense.

4. Dr. Schuster filed his report of December 31, 1999, and later testified before Judge Miller as to his diagnostic impressions and psychiatric opinion:

A. "I believe that he does have a mixed Learning Disability classified as a Developmental Expressive Writing Disorder and Expressive Language Disorder as shown by..."

B. "A second diagnosis is that of Delusional disorder, Grandiose type. This condition manifested by...These conditions may make it difficult for Mr. Edwards to communicate satisfactorily with his attorney, but he does

know he is charged with a crime and he understands the legal procedures associated with his trial. His delusional disorder impairs his judgment such as in his selection of Security work and carrying a gun. I believe Mr. Edwards is in need of psychiatric treatment although his condition is difficult to treat. He is potentially dangerous to others."

C. "As a result of my examination it is my opinion with a reasonable degree of medical certainty that Ahmad Edwards is competent to stand trial at this time. I believe he was of unsound mind, in the legal sense of that term, on or about July 12, 1999, in that he was suffering from a mental disease which impaired his appreciation of the wrongfulness of his conduct."

5. Dr. Lance E. Trexler, an expert neuropsychologist retained by Defendant's counsel, submitted a report dated February 23, 2000, and later testified as to his diagnosis and impressions:

A. "The results of the neuropsychological examination point towards a patient who clearly has a compromise of brain functions..."

B. "He clearly presents with a delusional disorder, grandiose type. He does appear to be hypergraphic, and he does endorse olfactory hallucinations, so it might be important to rule out partial complex seizures."

C. "As seen in from the clinical interview, this patient is extremely tangential and decompensates in the course of a conversation. He is going to have considerable difficulty participating in his legal defense. These are neurobehavioral changes that are seen with frontal lobe brain damage. Additionally, I suspect this patient also has major thought disorder, such

as schizophrenia, and it should be noted that he has a very strong family history in this regard..."

D. "This patient clearly needs neuropsychiatric treatment that should be inpatient. He needs pharmacological treatment as well as group psychotherapy..."

E. "...it seems likely that he was psychotic at the time of the offense secondary to the interactive effects between frontal lobe damage and significant environmental stress.

In conclusion, Dr. Trexler testified that it was his opinion, within a reasonable degree of professional certainty, the Defendant was not competent to stand trial and was unable to appreciate the wrongfulness of his conduct at the time of the offense.

6. As a result, Judge Miller found that Defendant was not competent to stand trial and, on August 16, 2000, ordered that he be committed to the Indiana Department of Mental Health. Defendant was then transported to Logansport State Hospital.

7. On March 14, 2001, the Indiana Family & Social Services Administration, Division of Mental Health, filed in this Court the report of its doctor, Dr. Steven H. Berger, who believed Defendant had "attained the ability to understand the proceedings and assist in the preparation of his defense."

8. On March 16, 2001, this Court, the Hon. Grant W. Hawkins presiding, ordered that Defendant be transported from Logansport State Hospital back to the Marion County Jail pursuant to the aforementioned report from the Division of Mental Health.

9. Counsel later suggested to the Court that Defendant was not competent to stand trial and asked that the Court hold a hearing to determine whether Defendant was, in fact, per the Division of Mental Health's report, competent to stand trial. As a result, on August 1, 2001, the Court reappointed Dr. Masbaum and Dr. Schuster to re-examine Defendant.

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10. Dr. Schuster filed his second report with the Court on October 9, 2001, and Dr. Masbaum filed his second report with the Court on October 17, 2001. After vacation of an earlier-set hearing, the Court set the matter for hearing on March 20, 2002, on the issue of competency to stand trial.

11. On March 20, 2002, the matter came before this Court, the Hon. Grant W. Hawkins, presiding, for hearing regarding Defendant's competence to stand trial. Present and testifying at the hearing were Dr. Schuster, Dr. Masbaum, and Dr.

Trexler. The Court was asked to, and did take, judicial notice of prior proceedings and filings in this matter, including the pro se filings of Defendant, the prior and more recent reports of the doctors and the summary report from the Indiana Family & Social Services, Division of Mental Health. Additionally, the Court took the opportunity to observe the Defendant's behavior and demeanor in the courtroom. At the conclusion of the hearing, the Court asked the parties to tender proposed findings of fact and conclusions of law, and set the matter for hearing on April 16, 2002, at 9:30 A.M.

12. At the March 20 hearing, Dr. Schuster, M.D. testified that "Mr. Edwards has shown marked improvement since (his) examination of December 14, 2001. At this time he shows good comprehension of the charges, the legal proceedings hereon and he demonstrated the ability to communicate so that he could assist his own attorney in his own defense. His detailed accounting of events of July 12, 1999, indicates clear understanding of those events." Dr. Schuster further determined, "as a result of my examination it is my opinion with reasonable medical certainty that Ahmad Edwards is competent to stand trial and that he was

of sound mind, in the legal sense of that term, on or about July 12, 1999, in that he was not suffering from a mental disease or defect that impaired his appreciation of the wrongfulness of his conduct."

13. At the March 20 hearing, Dr. Masbaum, M.D. testified that "He understands the charges against him. He understands the charges are serious. He understands that if he is found guilty that he could receive a significant sentence. He understands the Criminal Proceedings. He was able to provide reasonable definitions of the roles of the Judge, Jury, Witnesses, Prosecutor and Defense Attorney." Dr. Masbaum further determined "it is my opinion, based on reasonable medical certainty, that this individual, in spite of his disorder, does have comprehension sufficient to understand the nature of these proceedings. He is able to aid his attorney in his defense in accordance with I.C. 35-36-3-1. Furthermore, it is my opinion, based on a reasonable medical certainty that this individual was of sound mind at the time of the alleged offenses. He was able to appreciate the wrongfulness of his conduct at the time in accordance with I.C. 35-41-3-6."

14. At the March 20 hearing, Dr. Trexler, Ph.D and Clinical Neurospsychologist, testified that he was hired by the Defense. He did not prepare a new report on the Defendant, but testified that the Defendant has an IQ of 91. His attention and concentration functions are within normal limits for short-term auditory attention span. His cognitive flexibility falls into the lower end of the average range. His memory is at the 81st percentile for immediate auditory recall and the 84th percentile for delayed recall. His immediate visual recall is at the 90th percentile and the 89th percentile for delayed visual recall.

15. Dr. Trexler indicated that the Defendant "is going to have considerable difficulty participating in his legal defense."

16. Dr. Trexler made no reference to I.C. 35-36-3-1 or I.C. 35-41-3-6.

17. The Logansport State Hospital report of March 9, 2001, reports that the Defendant "appears to be psychiatrically normal."

FINDINGS OF FACT

18. Defendant suffered a brain injury as a result of a car accident several years ago, the injury including frontal lobe damage.

19. Defendant has a learning disability classified as a Developmental Expressive Writing Disorder and Expressive Language Disorder.

20. Defendant's thought processes are tangential, and he decompensates in the course of a conversation. His writings are hard to follow, not connected, and his thoughts not following a logical fashion.

21. Defendant may have hallucinations.

22. Defendant has a mental disease or defect that is a "delusional disorder, grandiose type."

23. The Defendant has shown improvement since his initial examinations in December of 1999.

24. The Defendant has an IQ of approximately 91, and has short term and delayed memory above average for both auditory and visual stimulants.

25. The Defendant recognized Mr. Jones and Mr. Hill as his attorneys.

26. The Defendant understands the charges against him.

27. He understands that the charges are serious and that he may go to jail if convicted.

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28. He understands the legal concepts of guilt and innocence and has filed his own motions, pro se, since the inception of the case.

29. The Defendant understands the criminal proceedings and further understands the roles of Judge, Jury, Witnesses, Prosecutor, and Defense Attorney.

30. Though the Defendant suffers from mental illness, he is able, within the dictates of law, to communicate satisfactorily with his attorneys in preparing his own defense.

CONCLUSIONS OF LAW

31. I.C. 35-36-3-4 requires the court to determine if the Defendant has the ability to understand the proceedings and assist in the preparation of his defense.

32. Based upon the findings above regarding the Defendant's understanding of criminal proceedings, the nature of the charges against him, and the roles of the parties, the Court finds that the Defendant is competent to assist his attorneys in his defense and stand trial for the charged crimes.

Dated: <<written>> 16 Apr 02

/s/ Grant W. Hawkins
Grant W. Hawkins

[cont- "ORDERS TO THE CLERK"]

[p.2]

stamped, self-addressed envelope so that this order may be provided.

"Thank you. As your office shall always be honored and respected."

"I affirm, under the penalties for perjury, that the foregoing representations are true.

4/18/2002

/s/ Ahmad Edwards
Mr. Ahmad Edwards

file.c.c.

MR. "AHMAD	)	IN THE MARION
EDWARDS"	)	SUPERIOR COURT
V.	)	ROOM NO.5
THE STATE OF	)	CAUSE NO.
INDIANA	)	496059907CF121975

<<stamped>> FILED APR 22 2002 <<signature>>
Sarah M. Taylor CLERK OF THE MARION CIRCUIT COURT

"ORDERS TO THE CLERK"

[p.1]

[1.] Please furnish me Mr. Ahmad Edwards a filed copy of this [four] 4 page petition you might have recived;

I have sent you an

[continued on page; 2 of; 2]

MR. "AHMAD EDWARDS"	)	IN THE MARION
	)	SUPERIOR COURT
V.	)	ROOM NO.5
THE STATE OF INDIANA	)	
	)	

<<stamped>> FILED APR 23 2002 <<signature>> Sarah M. Taylor CLERK OF THE MARION CIRCUIT COURT

"ORDERS TO THE CLERK"

1. Please file and copy this 5 page petition and return a copy back to me;

Iv enclosed a stamped, self-addressed envelope so that a copy can be provided that Iv ordered

Thank you for you help under these circumstances

File.c.c.

"I affirm, under the penalties for perjury, that the foregoing representation is true.

/s/ Ahmad Edwards
Mr. Ahmad Edwards

"MR. AHMAD EDWARDS"	) IN THE MARION
	) SUPERIOR
V.	) COURT ROOM 5
THE STATE OF INDIANA	) CRIMINAL DIVISION
	) CAUSE NO.
	) 496059907CF
	) 12975

<<stamped>> FILED APR 23 2002 <<signature>> Sarah M. Taylor CLERK OF THE MARION CIRCUIT COURT

"ORDERS TO THE CLERK"

[p.1]

1. Please copy and file this motion for competnet dress code and return a copy back to me the defendant Mr. "Ahmad Edwards"

   Thank you for your

[continued on page ;2of;3]

[cont-" ORDERS TO THE CLERK"]

[p.2]

returning of fillings directly!"

I am not able to enclose an stamped self-addressed envelop, this filling

Therefore I request a special facillitators envelop return this "Motion for Competnet Dress Code"

Faithfuly the young citizens of this state Iv work with on bus stops all wish for me to use. Your conscience for its proper an capable-

[continued on page ;2of;3]

[cont- "ORDERS TO THE CLERK"

[p.3]

as your office importance is the final power that helps one succeed by the trustworthyness it's bound with.

"I affirm, under the penalties for perjury that the foregoing representationsare true.

/s/ Ahmad Edwards

Mr. Ahmad Edwards
The Defendat

"MR.AHMAD EDWARDS" V. THE STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT ROOM DIVISION
	)	CAUSE NO. 496059907CF 12975 99-121975

<<stamped>> FILED SEP 10 2002 <<signature>> Sarah M. Taylor CLERK

"ORDERS TO THE CLERK"

09/05/02

[p.1]

1. Please copy and file this motion to protect orders [by trial rule 26 [C][7] and return a copy back to me the defendant Mr. Ahmad Edwards

   Thank you for your

[continued on page; 2 of; 2]

cont-"ORDERS TO THE CLERK"

[p.2] 09/05/02

returning of fillings directly!"

I am able to enclose an stamped self-addressed envelop to help this motions fillings for the protection of orders under trial rule 26 [C][7.]

Thank you again as your offical office is "importance" an the final power to succeed"

I affirm, under the penalties for pejury that the foregoing representations are true

/s/ Ahmad Edwards
Mr. Ahmad Edwards
The Defendant

File c.c.

Notice:

9/05/02

Adding this file to my cause wins asto the project the agency required for an acquisition to file next one that is going to be a bit larger than I'd planed. So to synchronize this stamped envelope herein A.\S.\A.\P. should put my department in the fast lane to help the public as Im planning to recive this filing within three [3] working days.

"Please allow me to thank you and your ofice again;

/s/ Ahmad Edwards
Mr. Ahmad Edwards

file c.c.

"MR.AHMAD EDWARDS"	)	IN THE MARION
	)	
V.	)	SUPERIOR
THE STATE	)	COURT ROOM 5
OF	)	CRIMINAL DIVISION
INDIANA	)	CAUSE
	)	NO:496059907CF121975

<<stamped>> SEP 16 2002 <<signature>> Sarah M. Taylor CLERK OF THE MARION CIRCUIT COURT
<<written>> 17 Sep 02 <<signature>> GWH

"P/T" "MOTION TO PROTECT ORDERS"

[Agency Form [Trial Rule 26 [C][7.]

[1500.]

The defendant Mr. Ahmad Edwards now exercises the right of the people to be secure in their papers and effects, against violation of the Fourth Article First Amendment of the United States Constitution of America with out the order or consent of the publisher contemporary publishing "polity"

[continued on page;2 of; 10]

~~the executive defene of seeurty should fairly have a man in the feild strong persuasive with communication skills such as an dupty sherrif or an coreetion officer. Experience from creating an bachelor's degree as an classified student in any area needing help. The tresure and the offical executive officer. Experienced~~

[p.2.] "P/T" MOTION TO PROTECT ORDERS – [cont"]

[Agency Form [Trial Rule 26 [C.][7.]

[1500.]

BEST AVAILABLE COPY

Herein stated as the defendants request the order to secure the things to be within this cause number ; 496059907CF121975

A.] The defendant is not comfortable with the caution procuters of this states "parabola" or takeing as to the matters of interest to the defendant Mr. "Ahmad Edwards." As he believes that if the interest are not carefuly studyed the performance of "economic loss" will yield the insight of "noblesse oblige" the defendant Mr. Ahmad Edwards coursed the best to reserve constitutional right of the First Amendment One Articale Four. Vision to the defence

[continued on page ; 3 of ; 10]

~~employees that are qualified or that can over the duration under which an individual can perform become a measure to include at the time when they shell be needed publicly as well as socially for support. However we are going to try to become familiar with you and or your firm. As the board complets the last phase.~~

~~We know it may not be that simple to read or hear about some of your personal ideas or beliefs. Yet we are completely "all ears"! We also know you are very busy and or involved with other matters to habe~~

[p.3] "P/T" "MOTION TO PROTECT ORDERS" – [cont"]

[Agency Form [Trial Rule 26 [C.][7.]

[1500.]

A.] as it is not ordering the state to deprive the liberty of it's produced moderate position at this or any time. Yet the defendant Mr. Ahmad

Edwards as offical party by an presidentual proclamation: of the United States citizens of "high interest": to the power that has been vested apon Americans with prudence to propose to fill offices as chief executives within the United States based to stand with courage ; honorable from the duty self-restraint takes by a man or womans rank for the "due reward" to become officers for the right of men and wemen and children publicly to be moderate in an "business" position for the help that

[continued on page;4 of;10]

~~demonstrate complete emotional re-educations power of influence thats underestimated by one in society.....values are different in addition and association inherent social attitude of interest are the personal interest."~~

~~As this is someting to consider as an subject of serious study depravity heritage, religion, sex, is of course subject of serious civil function. Manage the people and innumerable laws shell start foreing for proper concern.....respectability in this generation~~

[p.4] "P/T" "MOTION TO PROTECT ORDERS" – [cont"]

[Agency Form [Trial Rule 26 [C][7.]

[1500.]

A.] is need by every American citizen to do his or her part in actions to due away with the hassles of common law where the "value" of right shall and must be preserved wherein the public [or state] keeps government too become effectively added by right to not "loss"

in "plane view" be it economy as its "backbone" of "businesses" or any considered quorm a constitutional right may set-forth in this or any other state, city, or county, the party exist within when powerful regulators "assert large" in "business"

B.] From the copyright office the

[continued on page ; 5 of ; 10]

~~p.2 TIM PRESDINT ATTORNTTY~~

~~Employees that are qualified or that can over the duration under which and individual can perform become a measure to includ ; at the time when they shell be needed publicly as well as socially for support. However we are going to try to become familiar with your firm dualy as the board complets the last phase~~

~~We know it may not be as simpl as some may think to read or hear about some of your personal ideas or beliefs. Yet we are completely "all ears", and you will not be going against any social norms by becoming so busy or involved with other tings things to respond. Mr. Tim Eals has profoundly set us with the feeling that you simply have a great memory and very well could increase our chances of desire to for "wins."~~

~~For the occasions ;~~
~~Ahmad Edwards~~

[p.5.] "P/T" "MOTION TO PROTECT ORDERS" – [cont"]

[Agency Form [Trial Rule 26 [C.][7.]

[1500.]

B.] Document needed for items in this cause number; 496059907CF121975 as the defendant Mr. Ahmad Edwards request to "receive" transmitted to order trail court procedure as all items have become a "work made for hire" [or a work prepared by an employee within the scope of his or her employment" [as an obligation] for contribution for motion to question where the United States is not a party. In "compilation test" such parties [employee] "anonymously" or "pseudonymous" that use such element with "square form" the need for such contribution is a work "pseudonymous" and dose so fictitiously name the employee to be

[continued on page ;6 of ; 10]

~~Melzar: common noun steward of tutor Dan i, 11, 16.~~

~~Men-a-hem: (comforter) usurper of Israel's throne. Idolatrous and cruel. Reigned B.C. 772-761, 2kigs. xv. 14-22~~

~~Me ne: first word of Belshazzar's warning entire, "mene," he is numbered ; tekel," hois ho is weighed; "upharsin," they are divided, Dan. v. 25-28.~~

~~Meph-a-ath: levitical town in Reuben, Josh. xiii. 18.~~

~~Mercy seat: lid of the ark, ex. xxv . 17-22; hence , covering , or atonement for sin, Heb. ix. 5.~~

~~Me-rono-thite: designations in 1 Chr. xxvii 30; Nem. iii 2.~~

[p.6.] "P/T" "MOTION TO PROTECT ORDERS" – [cont"]

[Agency Form [Trial Rule 26 [C.][7.]

[1500.]

B.] On the line "point blank";[not to reveal bodies of proceedings with agents and or agencies admministrative acts] however as any party may order that of the district court it is not the defendants [of the] "parabola" way seen fit, by standard;

C.] Nobility of any party may order that of the district court clerk ~~to~~ to retain use preparing papers in event of the records faculty thust being filed within transmission partial the record as form or an copy may file a motion so shall it be ordered by the party than so shall it become a certificate of the clerk

[continued on page; 7 of ; 10]

~~D Welfar: i~~

~~1.) Public housing:~~

~~2. Public Housing:~~

~~3) Foruan countryies ; 11 after teens of the French assembly. Spoke constitutional laws r authorized educational associates nationaly~~

~~4.) Nurseing homes :~~

~~5.) School systims : 111 for a g in many ways technologicl technologe technological careers are difficult makeing booming options career options for students~~

~~6.) Manfuruters~~

~~7.) Land owoners : National nationaly sources of the indu pressure eradicating for scourge source scourg scouring normaly eff ends a year of $19 million of pressure~~

~~8.) Human society :~~

~~9.) Natural (recorees :~~

[p.7] "P/T" "MOTION TO PROTECT ORDERS" – [cont"]

[Agency Form [Trial Rule 26 [C.][7.] [1500.]

C.] of the district court showing the date as it was taken on the date on notice of filed expiration date for the motion filed as order "that helps the agent extending the time for transmitting the record shall he be permitted to respond at "purpose of signature" without requiring payment of the fee as order herein for the vision of administrative "agency board of commission"

D.] These orders must ordinarily be made in or at first instance, the United States district courts upon image to foresight of experience for the extraordinary

[continued on page ; 8 of ; 10]

~~p1. June~~

~~I'm so I'm pretty near afraid of the jail escorting me across the street to the court. I got set on going to the house on down the road from the hospital. Across teh bed on my stomach with nothing but pain and sickness feeling that dont fo in my body. I'm and~~

~~supposed to go to the neighbors [the evil side] of of that hospital says the court, but those old on fools must think give up and died. In that six months I was in the hospital I can't express wai what your children meant to me during that six months before the end of my stay there and I finally came, back to the jail. The~~

~~revealed~~

~~The hospital said there nothing wrong with me. Psychiatry help might have helped if psychiatrists could have penetrated the problems caused by the little gril whom now lives in the midle middle west [named Amber] cost~~

[p.8] "P/T" "MOTION TO PROTECT ORDERS" – [cont"]

[Agency Form [Trial Rule 26 [C.][7.] [1500.]

D.] Civil courts within the prudence of the United States do not produced relief sought that is not practicable or should be denied once duty request what should benevolent within reason apon and/or given by the district court if it has failed to show reason by the facts relevant the motion shall be filed with the clerk panel or the division of the court impracticable or not yet it is due to this motions requirement.

E.] A division as an contemporary publishing company at;

[continued on page ; 9 of; 10]

P.7

~~Very few men would somehow as you are...only...the top banked émigrés of new the easts. Material with no questions asked. Iv even herd you be called for "socially presentable." Enough to be worthy of close fellowship. By golden age I always put that stateme wonder what they ment when I hear that. Non of C "manner", of course now that I'm shrewd and vinon how to calculate manner as an the securities upper class hen should always use.~~

[p.9] "P/T" "MOTION TO PROTECT ORDERS" – [cont"]

[Agency Form [Trial Rule 26 [C.][7.] [1500.]

E.] 40 S. Alabama St. [Marion County] [Indianapolis] Indiana; 46204; in the United States request the record of this: cause number ; 496059907CF121975 : and items that have not been ordered by the defendant "Mr. Ahmad Edwards" to be filed with or with out the record to receive transmitted orders for trail court procedure and or as all items witch have become a "work made for hire" [or a "work prepared by an employee within the scope of his or her employment" for obligational contribution ; all rights reserved therefrom the year ninteen hundred and nindy nine.

[continued on page ; 10 of ; 10]

~~3 of~~

~~(Home) nssocaries) (copy)~~

~~[100% cotton, combed cotton loops]~~
~~goose down comforter [200 thread percal~~
~~bed skirt~~
~~bed shams~~
~~towel and washcloth set~~
~~flat fitted sheets [queen size]~~
~~pillow queen oversized~~
~~pilloweases oversized queen~~
~~tommy for Logansport civil side~~

[p.10] "P/T" "MOTION TO PROTECT ORDERS" – [cont"]

[Agency Form [Trial Rule 26 [C][7.] [1500.]

Wherefor, the unity of the record by any form foresighted herein specificly to govern the record by " millgil "busines" the contemporary publishing company orders all rights reserved hereinafter of any an all parts of this record that is filed may be produced, reproduced or stored in retrieval system, or transmitted in any form or by any electronic mechanical, photocopying, recording or otherwise, without prior permission of the above stated [acting publishing company] publisher.

" I affirm, under the penalties for perjury, that the foregoing is true

File:c.c.

/s/ Ahmad Edwards
Mr. Ahmad Edwards

☺Thank you!!!!!

~~copy~~

~~Grivence 9/3/2001/~~

~~Could you help me reach my goal as I require means to correct former mistakes with items such as spellcheck, gramercheak margruns, fou fonts, styles, and structure as they are truly needed in the programs of word perfect or lotus. Consider my leave to receive special permission with employing the courts as not needed the need is for an extra computer in the institution. As this is the only logical resolution to my exeisting problem for the bonding and mending that enables the assartainment for previously stated goals I'v set yet need to reach now. Therefor I respectfully request your help.~~

99121975
"Ambergress & Zenagencies"
[An orgainzational agency] for [1081

Responce to: Consist for order
to: the bord of directors vice president Mr. Tim Gales

<<stamped>> FILED SEP 25 2002 <<signature>> Sarah M. Taylor CLERK OF THE MARION CIRCUIT COURT

<<written>> ,ocvol <<signature>> GWH

"SATISFACTORY SERVICE LINE PROPOSED IN TORT CLAIM EXTENT OF LOSS."

"Explanations of citations to Clerk of the circuit Marion County superior court division five [5] at 200 E Washington St. in; Indiana's Indianapolis; 46204 of the United States [as greater part of becomeing dispositions of "fatpxtri" production and distribution; for "a broad highway" for agencies boards, commissions in a United States Court enforcement of proceedings ordered to become the largest the federal procedure]."

"I affirm that the forggoing is true

/s/ Ahmad Edwards
[Chief Executive Officer]
Mr. Ahmad Edwards

c.c. file

"Ambergress & Zenagencies"
[An orgainzational agency]

Cause: The order of fatpxtri; orders as responce:

Chapter Two p.1

Agency
Form
d095.]

"Mr. Tim Eales" the vice president oualified for the board of directors with full power over the order of the fatpxtri, witch is at the location; Logansport State Hospital ; 1098 S State Road 25 Logansport Indiana ; 46947-9699 thereafter is in need of conscience.

"Mr. Tim Eales," is under an duty seasonably to respect any order in question directly addressed with respect that request duty to supplement. Yet Mr. "Tim Eales," the offical excutive officer over the "board of directors" for the organizational agency titled "Ambergress & Zenagencies" of disabiled members of "fatpxtri" to clerk for the court any appeals

[continued on page;2 of;9]

"THE ORDER OF FATPXTRAI"

REQUEST: AS ORDERS

<<stamped>> FILED SEP 25 2002 <<signature>>
Sarah M. Taylor CLERK OF THE MARION
CIRCUIT COURT

Agency
Form
[097.]

<<stamped>> FILED SEP 25 2002 <<signature>> CLERK

<<WRITTEN>>

Dear Amad,

This is not a social letter, its a buissness one.

Where are those copys of the contract, membership, club As well as the other stuff we drew up. By-laws, repairme clauses, ect.

Plese send them asap. I have some intrested people. And tell me the status of your introdution of the organisation in court. If any.

As to some news. Havis went back to his jail and Mr. Pitts and Mr. Rotman are downstairs right now.

Also plese let me know if you have sent that stat to my lawyer & my juge.

Plese write back assap.

(Plese send the stuff with it)

Sincerly
/s/ Tim Eales

"MR. AHMAD	) IN THE MARION
EDWARDS"	) SUPERIOR COURT
V.	) ROOM 5 CRIMINAL
THE STATE	) DIVISION
OF	) CAUSE NO.
INDIANA	) 496059907CF12
	) 1975

<<stamped>> FILED SEP 26 2002 <<signature>>
Sarah M. Taylor CLERK
<<written>> 1 Oct 02 <<signature>>

"MOTION FOR COMPETNET
DRESS CODE"

AGENCY FORM [9001]

[p.1]

The agent Mr. Ahmad Edwards by the agency powers of Ambergress & Zenagencies an orgainzational agency with the

[continued on page ; 2 of ; 19]

[cont-"MOTION FOR COMPETNET
DRESS CODE"

[p.2] AGENCY FORM [9001]

subtantial rights of the United States Constitution ; as executive rule the means for young American citizens to use element, power and forsights for other young American citizens to take on penalties as to the orgainzational agencies foregoing conclusion drawn and found by young American citizens failing negligents thats classified as antiest-ablishment therefor the Ambergress & Zenagencies agents

[continued on page ; 3 of 19]

"MOTION FOR COMPETNET
DRESS CODE"
AGENCY FORM [9001]

[p.3]

shall or/is leaning not toward antiestablishment or their attitudes of standards that avoid authoritative apparel ; as it is congrsesional intent the agency has interpretated the following statutory permissible construction

9-14-1-2. Corporate image for executive instinct of agency dress code includes the following rights:

[continued on page ; 4 of; 19]

cont-"MOTION FOR COMPETNET
DRESS CODE"
AGENCY FORM [9001]

[p.4]

9-14-1-2, "Corporate Image."

[1] Representing the public in the public in the agency eye, agent should dress conservatively

[2] Each branch division office is exempted from part or all of the dress code apon argument that are valid or suggesting other parts of the country and or offices in the world; or:

[continued on page ; 5 of; 19]

[cont-"MOTION FOR COMPETNET
DRESS CODE"

[p.5] AGENCY FORM [9001]

9-14-1-2. "Corporate Image."—

[3] Executives in charge of blue-collar workers should dress like the workers ; or:

[4] Apon amateur opertions of nonverbal business that sales products or services to different citizens;

[5] The women and men in marketing as well as executives in corporate they shall follow the competnent dress code for and/or

[continued on page ; 6 of; 19]

[cont—"MOTION FOR COMPETNENT
DRESS CODE"
AGENCY FORM [9001]

[p.6]

9-14-1-2. Corporate Image."—

[5.] Of comfortable traditional attire reflecting convention logical, conservative competent positive adulthood alone or by agency advocate guidance therefor this "dress code" is ~~vailid~~ valid for classmates potential to use the powers of the United States Constitution Article IV, § 4. Thereof: or to proximate cause of its misdiagnosis that lead to executive

[continued on page ; 7 of; 19]

[cont-"MOTION FOR COMPETNENT
DRESS CODE"
AGENCY FORM [9001]

[p.7]

9-14-1-2."Corporate Image."—

injury negligence or trial by err for;

[6] All cases affecting ambassadors, public ministers and consuls thereof all admiralty and maritime jurisdiction herein the United States of America"

[7] Dress code [9-14-1-2]; as follows:

[A] Winter any material from wool

[continued on page; 8 of; 19]

[cont-"MOTION FOR COMPETNENT

DRESS CODE"
AGENCY FORM [9001]

[p.8]

[7]

[B] Upper-class neck twist and or tie from silk;

[C] Longsleeve full-custom material for shirts oxford cloth and only therein end-on-end weave;

[D] Dark socks of business and or hoes and only over –the calf material silk

[continued on page ; 9 of;19]

[cont—"MOTION FOR COMPETNENT

DRESS CODE"
AGENCY FORM [9001]

[p.9]

[7]

[E] Belts and belt buckles for business material of leather

[F] Any well-fitting jackets ~~lightnig~~ lightweight and haveyweight material from tweed camel hair, leather

[G] Predominant patterned scarves material from silk and wool

[continued on page ; 10 of; 19]

[cont—"MOTION FOR COMPETNENT

DRESS CODE"
AGENCY FORM [9001]

[p.10]

[7]

[H] Footwear functional formal and leisure

[I] Pockets watch and or fob gold

[J] Ladyes, and gentle man's leather band watch thin plain and gold

[K] "Blazers"

[I.] Red petite [4] button

[continued on page ; 11 of ; 19]

[cont—"MOTION FOR COMPETNENT

DRESS CODE"
AGENCY FORM [9001]

[p.11]

[7]

[K]

[II] Rich than petite [4] button or;

[ ] Deep green petite [4] button or;

[ ] Deep maroon petite [4] button or;

[ ] Dark brown pettite [2] button or;

[continued on page;12 of;19]

[cont—"MOTION FOR COMPETNENT

DRESS CODE"
AGENCY FORM [9001]

[p.12]

[7]

[K]

[ ] Chccal gray pettite [2] button or;

[ ] Patern red & green strip on blue background pettite [4] button or;

[ ] Patern window pain gray on black background petite [4] button [as suit] or;

[continued on page ; 13 of; 19.]

[cont—"MOTION FOR COMPETNENT

DRESS CODE"
AGENCY FORM [9001]

[p.13]

[7]

[K]

[ ] Patern brown and green stripe on black background pettite [suit][4] button or;

[ ] Patern green and red on blue stripe with white back ground pettite [suit][4] button or;

[ ] White and blue strip on gray back – ground petitte

[continued on page ; 14 of; 19]

[cont—"MOTION FOR COMPETNENT

DRESS CODE"

AGENCY FORM [9001]

[p.14]

[7]

[K]

[ ] Solid navy camel hair [blazer petite] and

[L] Handbag

[M] Diamond tennis bracelet under 10 ct.

[N] Anniversary ring only.

[O] Earings [diamond]

[continued on page;15 of;19]

[cont—"MOTION FOR COMPETNENT

DRESS CODE"
AGENCY FORM [9001]

[p.15]

This is directed to the young American citizens of the United States with being created for the value of young Americans to call then to the offical offices delegations of business and thereof the United States

So in so far as to direct all others: a white shirt and

[continued on page;16 of; 19]

[cont—"MOTION FOR COMPETNENT

DRESS CODE"
AGENCY FORM [9001]

[p.16]

conservative neck twist [only from silk] or tie shall crosse all racial age socioeconomic and or sex: proestablishment associates whom may have dealing

with this cause number : 4960599C7CF121975 on a regular basis, in an traditional manner of business as executives thereof the courts delegation for or apon the continuals

[continued on page ; 18 of ; 19]

[cont—"MOTION FOR COMPETNENT

DRESS CODE"
AGENCY FORM [9001]

[p.17]

manner of business as executives thereof the courts delegation for or apon the continuals of this court :

Their shall be an suit: made by any designer that dose not suit the unusual clothing of revolutions for the serious businessman and or businesswoman : of beige and or brown in the summer

[continued on page ; 18 of ; 19]

[cont—"MOTION FOR COMPETNENT

DRESS CODE"
AGENCY FORM [9001]

[p.18]

Werefor, the agency Ambergress & Zenagencies may provide law to help the young American citizen as agents we as an agency when speaking declarating powers discharged under the United States Constitution Article [5] Five Section [1] One, and thereof Amendments Twenty Section [3] Three proposed and

[continued on page ; 19 of; 19]

MR. AHMAD	)	IN THE MARION
EDWARDS	)	SUPERIOR COURT
V.	)	ROOM NO. 5
THE STATE	)	CAUSE NO.
OF INDIANA	)	496059907CF12
	)	1975

"ORDERS TO THE CLERK"

[p.1]

[1] Please furnish me Mr. Ahmad Edwards a filed copy of this [nineteen] 19 page motion for competinet dress code [agency form]

you might have recived;

I have sent you an

[continued on page, of;]

40%\60%

Legers

1. Majors stock
2. Trinty project
3. Trinty pro.
4. Accoiate
5.] 9-liner [films 1,
6.] Donations construction to hospital
7.] Loud class [issue 1,
8.] ~~MI~~ "Enmity" divison 1.-4.
9] U.S. Dept. of Housing, and Urban Developments
10] Endorcements bodybilders champisionchips
11] Ive leguage

[cont—"MOTION FOR COMPETNENT

DRESS CODE"
AGENCY FORM [9001]

[p.19]

ratified respectively in United States Conventions historicaly on April 26, 1933 therein the United States Constitution and therefore order shall be the emphasised law herein.

"I affirm, under the penalties for perjury that the foregoing representations are true.

/s/ Ahmad Edwards
Ahmad Edwards
The Defendant
[C.E.O]

"MR. AHMAD	)	IN THE MARION
EDWARDS"	)	SUPERIOR COURT
V.	)	ROOM NO. 5
THE STATE	)	CRIMINAL DIVISION
OF INDIANA	)	CAUSE NO.
	)	496059907CA21975

<<stamped>> FILED OCT 01 2002 <<signature>> CLERK

<<written>> 1 Oc 02 Denied. Must be filed by counsel. <<signature>>

"MOTION FOR TRANSCRIPT OF PRIOR TRIAL"

[p.1]

Now comes the Defendant, Mr. Ahmad Edwards, to the extent asto move this court to grant a motion herein to provide the defendant the trial transcript at state expense for the following reasons:

[continued on page ; 2 of; 7]

"MOTION FOR TRANSCRIPT OF PRIOR TRIAL"

[p.2]

1. The Defendant Mr. Ahmad Edwards is a party to this cause No. 496059907CA21975 herein this Court Room No.5 of the criminal division in the county of Marion in the state of Indiana an he therein except as otherwise required by the Constitution of the United States or provided by act of Congress or in rules prescribed by the Supreme Court pursuant

[continued on page ; 3 of; 7]

"MOTION FOR TRANSCRIPT
OF PRIOR TRIAL"

[p.3]

1. to statutory authority has the privilege and or right to the vision thereof this causes tried before a judge principles trial transcripts of prior reasoned experience with respect to an element of a claim or defense.

2. The Defendant Mr. Ahmad Edwards sees plain errors

[continued on page; 4 of;7]

"MOTION FOR TRANSCRIPT
OF PRIOR TRIAL"

[p.4]

2. affecting substantial rights and designating the defence to service the plain ~~to~~ errors to the attention of the court.

3. Therein this above stated cause number the defendant Mr. Ahmad Edwards" by the court was declared an defendant of competency to circumference on April 23, 2002.

continued on page; 5 of;7

"MOTION FOR TRANSCRIPT
OF PRIOR TRIAL"

[p.5]

4. The Defendant Mr. "Ahmad Edwards" trial is set for September 30,2002.

5. The Defendant is indigent.

Therefor the defendant is entitled as a matter of right, to the complete transcript of the above cause No. 496059907CA21975

[continued on page ; 6 of; 7]

"MOTION FOR TRANSCRIPT
OF PRIOR TRIAL"

[p.6]

proceeding that the defendant deems necessary as he intends to urge the evidence as not the contrary. Yet relevant to such finding. As is to be included as to file and serve parts of the transcript, with a statement of the issues that deems a transcript to be necessary. To circumference as the fortitude of the court and by the defendants right to

[continued on page; 7 of; 7]

"MOTION FOR TRANSCRIPT
OF PRIOR TRIAL"

[p.7]

trials therein at state expense; Britt v. North Carolina [1971] 404 U.S. 226.

Wherefore, the defendant Mr. Ahmad Edwards requests this court to grant this motion.

"I affirm under the penalties for perjury that the forgoing representations are true.

/s/ Ahmad Edwards
Mr. Ahmad Edwards
The Defendant

MR. AHMAD EDWARDS V. THE STATE OF INDIANA	) IN THE MARION) SUPERIOR COURT) ROOM NO. 5) CAUSE NO.) 496059907CF12) 1975

"ORDERS TO THE CLERK"

[p.1]

[1] Please furnish me Mr. Ahmad Edwards a filed copy of this [sevan] 7 page motion for transcript of prior trial you might have recived;

I have sent you an

[continued on page; 2 of; 2]

~~"IVE LEAGUE RECORDS"~~

~~1 Travel diary~~

~~2 Itinerayy~~

"ORDERS TO THE CLERK

[p.2]

stamped self-addressed envelope so that this order may be provided

Thank you. As your office shall always be honored an ~~represe~~ respected."

"I affirm, under the penalties for perjury that the foregoing representations are true.

/s/ Ahmad Edwards
Mr. Ahmad Edwards

09/24/2002

File.c.c.

166. Unit

167. Unto.

168. Vainless

169. Valiant

[cont-"ORDERS TO THE CLERK"]

[p.2]

stamped self-addressed envelope so that this order may be provided.

"Thank you. As your office shall always be honored an respected;

"I affirm, under the penalties for perjury, that the foregoing representations are true

09/24/2002
File.c.c.

/s/ Ahmad Edwards
Mr. Ahmad Edwards

~~C] Allegation of jurisdiction :~~

~~I] SC~~

MR. "AHMAD	)	IN THE MARION
EDWARDS"	)	SUPERIOR
V.	)	COURT
THE STATE	)	ROOM NO.5
OF INDIANA	)	
	)	CAUSE NO.
	)	496059907C
	)	F121975

<<stamped>> FILED OCT 03 2002 <<signature>>
CLERK OF THE MARION CIRCUIT COURT
<<written>> 17 Oct 02 Denied <<signature>>

"ORDERS TO THE CLERK"
AGENCY FORM [5005]

[p.1]

[1] Please furnish me Mr. Ahmad Edwards the forms;

[A] L.R.8.1 Pro se
[B] 42 U.S.C.§ 1983
[C] 42 U.S.C.§ 405[G]

[continued on page; 2 of; 3]

"ORDERS TO THE CLERK"
AGENCY FORM [5005]

[p.2]

I Mr. "Ahmad Edwards" could not recive an "indigent pre-request envelope" to send your office for an edition of ways to exceed appropriate...so please acknowledge my filing with an offical clerk of the circuit court envelope.

"I affirm under the penalties for perjury that the foregoing representations are true.

/s/ Ahmad Edwards

Mr. Ahmad Edwards
[party]

File c.c.
10\6\2002

120. Pictour

121 PLI. DOR. LYS.

122. Plural

123. Possessives
Contractions

124. Possible

"Once again I'm veryed honored to order the services of your;.."Zeal;"..."So I'V Used a degree somewhat at the end measure of this true foregoing representation has its power "squire": <<drawn>> ☹ ☺

	)	IN THE MARION
	)	SUPERIOR
MR. "AHMAD	)	COURT ROOM.5
EDWARDS"	)	
V.	)	
	)	CAUSE NO.
THE STATE	)	496059907CF
OF INDIANA	)	121975

<<stamped>> FILED OCT 23 2002 <<signature>>
CLERK OF THE MARION CIRCUIT COURT
<<written>> 25 Oct 02 Denied <<signature>>

" DEFENDANTS PLEA"

[p.1]

The compelling circumstances of immunity that entitled I the defendant, Mr. Ahmad Edwards to bifurcated trials such as the statements sought to be obtained and statements made by the product of defence directly; indirectly are tantamount, paramount in this criminal trial

[continued on page; 2 of, 2]

[cont – "MOTION FOR COMPETNENT
DRESS CODE"

AGENCY FORM [ ]

[cont- "DEFENDANTS PLEA"
[p.2]

and plainly moves I the defendant Mr. Ahmad Edwards by counsel at this court conduct of a pre-trial hearing to basis the not responsible by reason of insanity, verdict to the plea of tempary insanity."

Wherefore I the defendant Mr. Ahmad Edwards plea for "tempary insanity," verdict not responsible by reason of insanity."

" I affirm under the penalties for perjury, that the foregoing representations are true.

/s/ Ahmad Edwards
Mr. Ahmad Edwards
The Defendant

	)	IN THE MARION
MR. "AHMAD	)	SUPERIOR
EDWARDS"	)	COURT ROOM
	)	NO. 5
V.	)	
	)	CAUSE NO.
THE STATE	)	496059907C
OF INDIANA	)	F121975

<<stamped>> FILED OCT 23 2002 <<signature>>
CLERK OF THE MARION CIRCUIT COURT

<<written>> 25 Oct 02 <<signature>>

"NOTICE OF DEFENSE OF
MENTAL DISEASE AND/OR
DEFECT"

[p.1] AGENCY FORM [5100]

The defendant Mr. Ahmad Edwards hereby gives notice pursuant to I.C. 35-36-2-1 that the defendant intends to interpose the defense of mental disease and\or defect as set out in I.C. 35-41-3-6, and hereby moves the court to appoint

[continued on page; 2 of; 2]

cont-"NOTICE OF DEFENSE OF

MENTAL DISEASE AND\OR

DEFECT"

[p.] AGENCY FORM [5100]

three [3] competent disinterested psychiatrists to examine the defendant ~~Mr. Ahmd~~ "Ahmad Edwards; and to notify counsel of and\or the defence of the time and place of said examinations in advance so that counsel may be present at said examinations.

" I affirm under the penalties for perjury, that the foregoing representations are true.

/s/ Ahmad Edwards
Mr. Ahmad Edwards
The Defendant

impermissibly persuasion is laying apon the court to support Christian v. State whether the lesser offense triggered with such allegation charged to inquiry resolution for human constitua

PSYCHIATRIC EVALUATION

Name: Ahmad Edwards **Date of Exam:** November 26, 2002

Date of Birth: 1/29/73

Social Security Number: 309-78-9239

Cause Number: 49G05-9907-CF-121975

Charges: Attempted murder, criminal recklessness, battery, and theft

Purpose of the Examination:

The purpose of the examination was to determine Mr. Edwards' competency to stand trial.

Qualifications of Examiner:

Please refer to my curriculum vitae.

Informed Consent:

Mr. Edwards was informed that I was asked by his attorney, Robert Hill, to perform a psychiatric evaluation to determine his competency to stand trial. He was informed that I would be taking a complete psychiatric history and a mental status examination. He was further informed that the examination was not confidential and a report would be sent to Mr. Hill. Finally, he was informed that anything said could be used against him. He agreed to proceed.

Identification Information:

Mr. Edwards is a 29-year-old single black male inmate of the Marion County Jail. At the time of his arrest he was unemployed. The examination occurred in an interview room and lasted approximately 2 1/4 hours.

Records Reviewed:

1. Charges
2. Affidavit of probable cause
3. Police reports
4. FBI reports
5. Writings
6. Voluntary statement
7. Testimony of Dr. Trexler
8. Reports
    a. Dr. Trexler
    b. Dr. Masbaum (2)
    c. Dr. Schuster (2)
9. Videotapes
    a. Parisian surveillance video
    b. News clips from various TV stations (3)
10. Psychiatric records from Logansport State Hospital

Psychiatric History:

Mr. Edwards has very little past psychiatric history. During the early 1990's he lived in Tennessee and saw a his mother's psychologist friend, Helen Lilord, for a couple of free sessions.

Mr. Edwards was hospitalized at Logansport State Hospital from 12/12/01 until March, 2002 for restoration of competency to stand trial. While there, Mr. Edwards was given no psychiatric diagnoses and no psychotropic medication although there were

numerous notations in his chart concerning grandiose delusions.

Exactly when his grandiose delusional system started is unclear to me because of Mr. Edwards' lack of insight and the lack of a reliable collateral informant for me to interview.

Legal History:

Mr. Edwards said that he had no prior felonies but was arrested previously on a trespassing misdemeanor when he was homeless.

Mr. Edwards was arrested on 7/12/99 for attempted murder, criminal recklessness, battery, and theft. According to the affidavit of probable cause and a various police and witness reports, Mr. Edwards was observed via video-surveillance to take a pair of shoes, put them in a sack, and then rapidly walk out of the downtown Indianapolis Parisian Department store. He was apprehended by a store employee, a scuffle ensued on the sidewalk, and the store employee received a minor gunshot wound to the shoulder. A bystander was also wounded in the leg by Mr. Edwards. Following the shooting, Mr. Edwards fled and was apprehended in a downtown parking garage by an FBI officer. During the arrest, Mr. Edwards was shot in the leg because he refused to drop his gun.

The following is Mr. Edwards' account of his alleged crime. In June, 1999 Mr. Edwards had been living briefly in Phoenix, Arizona with his mother and sister. Both returned to Indiana and lived with their grandmother. Mr. Edwards stayed with his grandmother for a week and then began living in

various shelters. When his sister obtained an apartment, he moved in with her.

He denied drinking or using drugs on the day of his alleged crime. He arose at 4:00 AM, dressed, left the apartment, and walked around until the soup kitchen at North United Methodist Church opened in the late morning. After eating, he ran downtown. He said that he was to meet at hip-hop artist at Circle Center Mall but that the artist would find him. He wandered by a shoe store on the second level and said that the proprietor asked him to come in and show a prospective employee how to dress. He then went to the Parisian Department Store, felt "nauseated and sick," "saw stars and static," and "blacked out." He came to, continued through Parisian, blacked out again and then found "some employees who were doing a horrific sweep of the business. People moved into the core of true activity. Many with the spirit and fellowship of people were being called into the inner core of the department store." He blacked out again. He found himself on the street engaged in a tussle with a man. His firearm spilled into the street. He thinks that the man may have been the artist whom he was supposed to meet. "It was programmed to be spectacular." He said that the man tried to grab his firearm but that he was able to get it and fire a warning shot into the air to stop the traffic. "It caused pandemonium and I panicked." He attempted to return to the sidewalk but it was blocked so he fired another shot at the man's feet. He thinks that the shot struck an "innocent man." He crossed the street, ran down an alley and entered a parking garage when he was shot by "a U.S. marshal" and was apprehended.

Medical History:

Mr. Edwards denies medical illnesses, previous surgeries, allergies, and any current medications. He is TB and HIV negative. In about 1995 he received a closed head injury in a motor vehicular accident, but there are no known aftereffects. He started smoking at age 8 and used to smoke four of packs of cigarettes per day.

Mr. Edwards gave an improbable drinking history. He said that he used to drink "48 tall Budweiser cans of beer" per day along with one pint of hard liquor. He said that he would drink this all in about two hours. He started drinking at age eight and said that he has had one or two alcohol-related blackouts. He denies ever having DT's.

Mr. Edwards snorted heroin when he lived in Florida in 1999. He also smoked marijuana from age 12 to 23. He denied the use of amphetamines, cocaine, hallucinogens, or sedatives.

Review of Systems:

Mr. Edwards complained of headaches associated with nausea and blurred vision. These may last 4-5 days. He has been told that he has a heart murmur.

Family History:

Mr. Edwards' parents never married. He said that his mother has a doctorate in divinity and lives in Arizona. His father was a drug abuser and was murdered in the 1970's. He has one sister, age 33, who he claims has been diagnosed with AIDS and is "seriously mentally ill." His grandmother died of an brain aneurysm.

Personal and Social History:

Mr. Edwards was born in Indianapolis. His developmental milestones are unknown. He claimed that he was physically abused by his step-father, a martial arts instructor. He said that he had dyslexia in grade school. He dropped out of school in the 11th grade and has not obtained his GED.

Mr. Edwards has previous worked in security and has been fired "quite a few times." He claimed that he had been "self-employed" prior to his arrest and that he worked with "entertainment clients." When he was in Florida he worked as a cook.

Mental Status Examination:

Mr. Edwards is a muscular man with average height and weight. He had short hair, beard and mustache. He was cooperative. There were no abnormal motor movements. His mood was neither depressed nor elated but was somewhat restricted. His thinking process was loose, illogical, circumstantial, and at times quite irrelevant. He had evidence of grandiose delusions (i.e., he was going to write several books, his mother was a Blank Panther and worked for the CIA. He also said that he was with his mother when she worked for the CIA in the late 60's. He denied auditory hallucinations but said that he had a visual hallucination when he was living with his sister (i.e., he said a cloud in the apartment and it rained inside but didn't get the floor wet.) He was oriented to person, place and time. He knew the president, past president, both Indiana senators, but not the governor. He remembered three of three objects at five minutes. His intelligence appeared somewhat above average by use of his vocabulary. He has poor insight and judgment.

Diagnoses:

Axis I (Psychiatric Diagnoses):

1. Schizophrenia
2. Alcohol abuse by history
3. Heroin and marijuana abuse by history
4. History of dyslexia

Axis II: Deferred

Axis III (Medical Diagnoses):

1. History of closed head injury
2. Headaches

Axis IV (Psychosocial Stressors):

1. Death of grandmother
2. Incarceration and awaiting trial
3. High school dropout
4. Unemployed
5. Homeless

Axis IV (Global Assessment of Functioning):

Mr. Edwards' GAF scale score is 15 which indicates very severe mental illness.

Tests Administered:

Georgia Court Competency Test: Mr. Edwards' score on the Georgia Court Competency Test was 76%. He believes that people watching a trial "give spirit and fellowship" to a trial. He did not understand what criminal recklessness meant. Most importantly, his description of the alleged crime was grossly delusional.

Psychiatric Opinions:

These opinions are rendered to a reasonable degree of medical certainty. Opinions may change as further discovery proceeds.

Psychiatric Diagnoses:

In someone with a delusional system, at least three psychiatric diagnoses must be considered: schizophrenia, bipolar disorder (manic type), and delusional disorder. Because Mr. Edwards lacks a euphoric mood, hyper-talkativeness, pressured speech, etc., he cannot be diagnosed with bipolar disorder. He cannot be diagnosed as simply a delusional disorder either, because his symptoms include more than delusions (His thought process is markedly impaired with loose associations, illogic, irrelevance, and marked incoherence. His writings, including his voluntary statement, are good examples of his impaired thought process.). Because of his grandiose delusional system and his marked thought disturbances, his primary psychiatric diagnosis best fits schizophrenia.

Competency to Stand Trial:

Mr. Edwards is not currently competent to stand trial. Although he mostly understands the charges against him, he is unable to cooperate with his attorney in his defense because of his schizophrenic illness. His delusions and his marked difficulties in thinking make it impossible for him to cooperate with his attorney.

Recommendations:

In my opinion, Mr. Edwards is incompetent to stand trial and should be remanded to the Division of

Mental Health and hospitalized at Logansport State Hospital where his competency to stand trial can be restored. He cannot be restored to competency without treatment of his schizophrenic illness with antipsychotic medication.

/s/ Philip M. Coons, M.D.
Philip M. Coons, M.D.
Professor Emeritus of Psychiatry
Indiana University School of Medicine

STATE OF INDIANA	) IN THE MARION
COUNTY OF MARION	) COUNTY
STATE OF INDIANA	) SUPERIOR COURT
VS.	)SS: CRIMINAL DIVISION,
AHMAD EDWARDS	) ROOM 5
	) CAUSE NO. 49G05-9907-
	) CF-121975

<<written>> 27 2002 <<signature>>

SUGGESTION OF INCOMPETENCY

Comes now, Robert Hill, Pro Bono, Public Defender for Ahmad Edwards and notifies the Court that Mr. Edwards is incompetent. In support, Robert Hill would show as follows:

1. That Ahmad Edwards is very loose in his communication.
2. That Ahmad Edwards is unable to meaningfully communicate with counsel about any subject that makes sense, much less the facts of this case.
3. That Ahmad Edwards was not effectively treated during his last stay at Logansport State Hospital and that record is filled with observations by professional medical staff indicating delusions, grandiosity and loose association and that these facts have not been taken into account by the Court's doctors.
4. That Dr. Coons, Professor Emeritus of Psychiatry, Indiana School of Medicine, feels that Ahmad Edwards is incompetent and that Dr. Coons has reviewed the records from Logansport State Hospital and evaluated Ahmad Edwards on November 25, 2002, a written report is attached.

5. That the writings submitted to the Court by Ahmad Edwards are indications of his thought disorder and his inability to communicate and the court is asked to take judicial notice of all the writings as well as the last court appearance by Ahmad Edwards and his interaction with counsel and the Court.

6. That Ahmad Edwards has in the presence of counsel, Dr. Trexler, Dr. Mausbaum and in open court indicated he has a "protrusion" extending from his head and the Court will recall he, in fact, does not have such. His description of a "protrusion" is in fact symptomatic of his thought disorder.

7. That Ahmad Edwards is not able to effectively communicate with counsel so as to assist in his defense.

8. That Ahmad Edwards does not have adequate understanding of the role of the parties to proceed to trial.

9. That the State has been notified of this filing.

WHEREFORE, Robert Hill request the Court to find Ahmad Edwards incompetent and have him treated for his schizophrenic disorder at Logansport State Hospital and for all other relief just and proper in the premises.

Respectfully submitted,

/s/ Robert J. Hill
Robert J. Hill #8165-49

GILROY, KAMMEN &
HILL
One Indiana Square
Suite 150
Indianapolis, Indiana
46204
(317) 236-0400

(317) 236-0404 fax

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Pleading was served upon the Marion County Prosecutor's Office, 560 City-County Building, Indianapolis, Indiana 46204 via hand delivery this 27th day of November, 2002.

/s/ Robert J. Hill
Robert J. Hill
Attorney for Defendant

"Ambergress & Zenagencies"
[An Organzational Agency]

AGENCY
FORM
[096.]

[p.1] "RESONABLE CALCULATIONS"

<<stamped>> FILED DEC 02 2002 <<signature>>
Sarah M. Taylor CLERK

I.]
Over the minimum years of thirty [30] to appear and under the maximum years of thirty two [32]: in nine states accurate to this agency as an concern of the various states in the United States with the greatest populations.

II.]
In order to achieve employees labor, faith in business; the process this agency has stated in filed commerical trade secrets faceing the circumstances of incident in the event to avoid torts to be brought aginst the courts table of many faces; so

[continued on page ;2 of; 14]
"Ambergress & Zenagency"
[An Orgainzational Agency]

[p.2] RESONABLE CALCULATIONS

II.]

shall be the specific form of secrets to govern square collecting the four hundred and seventy five dollars [$475.] stated as the registration fee; from five thousand young American [5,000], citizens within communities of society. Between the ages of nineteen [19] and fourty [40].

[see: trade secret
step three [3]].

III.] With only about tewnty percent [20%] of the young American citizens from the [9] nine base states as the agency

[continued on page;3 of; 14]

"Ambergress & Zenagencies"
[An Organzational Agency]

[p.3] RESONABLE CALCULATIONS

III.]
valued possible locations ~~five~~ for events [concluding and] well-runing logically for a heavy twenty five weeks [25] for the organization to advance one artist and one group by eliminating all others.

IV.]
Infered by the expediency of this type of agency event and by the registrations average fee [to not at any time have an discounted additional rate] with American multiplication and division as means;[are] equal to the amount of five billion three hundred million eight three and seven hundred fifty thousand

[continued on page;4 of;14]

"Ambergress & Zenagencies"
[An Orgainzational Agency]

p.4] [IV.] RESONABLE CALCULATIONS

Dollars : such an abundant equation;

[A.]	5.000
x	475
	25.000
	35000

+	20000
=	2375000
x	25
	1.875.000
+	4750000
=	59375000
x	9
=	538.375.000
x	10
	000000000
+	538375000
=	5.383.750.000

"the maximum"

[continued on page;5 of; 14]

Ambergress & Zenagencies
[An Orgainzational Agency]

[p.5] RESONABLE CALCULATIONS

V.]
Not to compare the advantages where the young Americans might earn extra money by the same terms they'll hear our public notices. Yet they will see new advanced ways to become of an profession.

VI.]
As such information contains an element essentialy for an full-term employment to and for the United States

Illustrateing with the ideal ten percent [10%] of young Americans in five [5] base states as the agency valued also these possible locations for events concluding twenty five weeks [25] to advance by exact-

[continued on page;6of; 14]

"Ambergress & Zenagencies"
[An Orgainzational Agency]

[p.6] RESONABLE CALCULATIONS

VII.]
ing all but one artist and/or group.

VIII.]
which causes properly the funds in the follwing admissions made in regions adequat in regards to the population.

IX.]
Abundant equation valued: second to the greatest mission of the agency yet with the same process stated in filed trade secrets of the titled orgainzational agency "Ambergress & Zenagencies" and/or protected by orders requesting such agency documents into existence

[continued on page;7 of; 14]

"Ambergress & Zenagencies"
[An Orgainzational Agency]

[p.7] RESONABLE CALCULATIONS

IX.]
with the tabled laws of multiplication and division as means: [are] equal to the amount of two billion three hundred million seventy five hundred thousand dollars such an abundant equation supplemened what we'v combined to bring the young Americans an fastened and large result harmonious to unite, creat, merged reson to help them obtain the agency new needed varieties uniformed by their signatured contracted appending to affix, the [youth's] or young Americans loyalty. Supreme giveing perfect exposure the basic example

[continued on page;8 of;14]

"Ambergress & Zenagencies"
[An Orgainzational Agency]

[p.8] RESONABLE CALCULATIONS

IX.] of traditional equations we'v oranged:

[A.]	4000
x	475
	20000
	28000
+	16000
=	1900.000
x	25
	9500000
+	3800000
	47500.000
x	5
=	237500000
x	10
	000000000
+	237500000
=	2.375.000.000

"The Fundamental Less"

[continued on page;9 of;14]

"Ambergress & Zenagencies"
[An Organzational Agency]

[p.9] RESONABLE CALCULATIONS

X.]

This dramatic low-cost method for protecting the lives and health of young American citizens should not or textures must not be waisted as this pattern help choices to purpose the excess needs of career strongly as the following methods are described or composed as one of the smallest definitions of matter but is explaned to fund originally a great quantitie of ideals for honore clubs, to start wiser and more tactful exalited memberships thereof society injudicious equal to the amount of choice as[or]at one billion

[continued on page;10 of; 14]
"Ambergress & Zenagencies"

[An Orgainzational Agency]

[p.10] RESONABLE CALCULATIONS

X.] Four hundred million forty three dollars;

[A.]	2000
x	475
=	10000
	14000
+	8000
=	950.000
x	25
	5050000
+	1900000
=	24050000
x	6
=	144300000
x	10
	000000000
+	144300000
	~~1.4443.000000~~
=	1.443.000.000

"The Minimum"

[continued on page;11 of;14]

"Ambergress & Zenagencies"

[An Orgainzational Agency]

[p.11] RESONABLE CALCULATIONS

XI.]

This is the claim in the next region of the young American population; "that the agencies that come in to town waste to much time and violate, damage, and breach the good faith of the young American citizens." "As they would"! A lot of agencies in this type of ~~fil~~ field; "obligations to many of them –"is-and-all-ways"- will be without remdy. We reject this. Within our determination to amount to something more to the young Americans witch is what will constitute their support as we remedy these individual goals they'v set-forth as the basis to produce as we will not refuse, curtail, or lack

[continued on page;12 of;14]

"Ambergress & Zenagencies"
[An Orgainzational Agency]

[p.12] RESONABLE CALCULATIONS

XI.]

abandon or preclude. "There is no reson to" fortitude, temperance prudence for justice is what we are about at thirty million four hundred dollars [A]; 1000

x	475
	5000
	7000
+	4000
=	475000
x	1
=	475000
x	32
	950000
+	1425000
=	15200000
x	2

= 30.400.000

"The Sufficient"

[continued on page ;13 of; 14]

"Ambergress & Zenagencies"
[An Orgainzational Agency]

[13.] RESONABLE CALCULATION

XII.]

The:

Sufficient;	30.400.000
Minimum;	1.443.000.000
Fundament;	2.375.000.000
Maximum;	5.383.750.000
Total:	9.232.150.000

The mathematical consistency to unite the young American citizens to create under the United States Constitution of America Amendment Twenty Seven presenting their right to not be denied or abridged Article Twenty Six Section One that helps us develope for the young Americans citizens the axis enactment of

[continued on page; 14 of; 14]

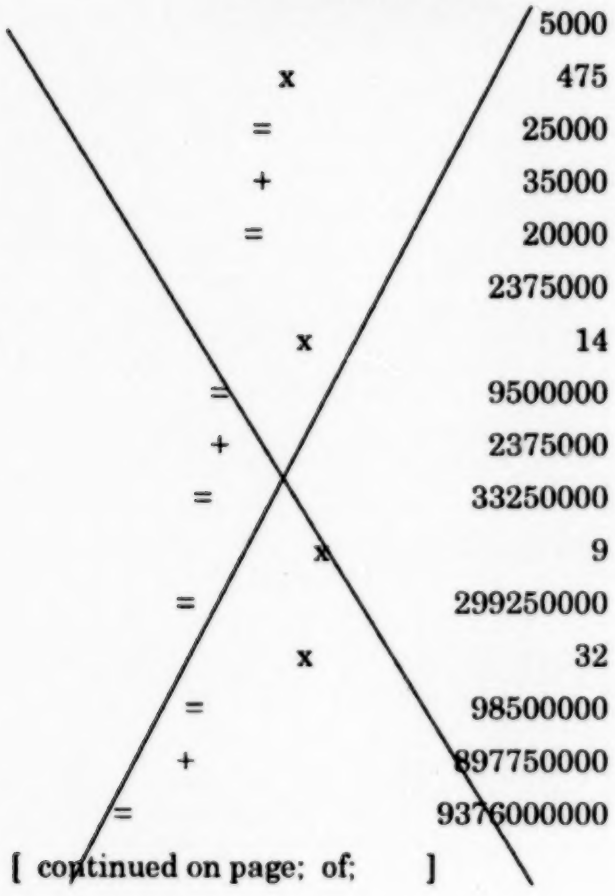
"Ambergress & Zenagencies"
[An Orgainzational Agency]

merged respects and/or the combining conditions the not often enouf used to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their

respective wiritings and discoveries; Article One Section Eight of the United States Constitution of America witch is what we are set immediately by the power of the executive board of directors over "Ambergress & Zenagencies" "wish us good luck"

"I affirm under the penalties for perjury that the foregoing representation are true

/s/ Ahmad Edwards
Mr. Ahmad Edwards
Chief Excutive Officer



[continued on page; of;]

	)	IN THE MARION
MR. "AHMAD	)	SUPERIOR COURT
EDWARDS"	)	ROOM.5
	V.)	
THE STATE	)	CAUSE NO.
OF	)	496059907CF
INDIANA	)	121975

<<stamped>> FILED DEC 02 2002 <<signature>>
Sarah M. Taylor CLERK

"PRACTICE ROUTINE"

[RULE 406 RULES
OF EVIDENCE [HEREIN
THE UNITED STATE]
ARTICLE IV

AGENCY FORM [9005]

As the evidence of the habit of routine of "Ambergress & Zenagencies" an organizational agency

[continued on page; 2 of; 9]

[cont-] "PRACTICE ROUTINE"][p.2]

follows:

[1.]

Article IV:limits:courts and magistrates United States rules of evidence rule 406.

"Routine Organization Executives Practice";

[2]

Indiana's Indianapolis

: City and state of practice :

[3]

Marion County at : 40 South Alabama.St [2-T]

: Place of practice :

[continued on page;3of; 9]

[cont-] "PRACTICE ROUTINE"]

[p.3]

[4]~~06/03/2002~~ 06/ 11 /2002

Date of practice :

[5]

3;hours and 50;min

: Time of practice :

[6] ~~"Equestra"~~ "Ambergress & ~~Zenageney~~ Zenagencies"; "Trinity Project"

: Groups that conducted organization :

[7]

Mr "Jason Majors"

Mr. "Ahmad Edwards"

[continued on page; 4 of;9]

[cont-] "PRACTICE ROUTINE"][p.4]

[7]

: Chief executive officers :

[A]

Determination of parties, consideration asto conducted work to resolve ~~tradm~~ trademark groups ;

[B]

Amalgamation to reading truncated affidavit of "trinity pro." Litigants amenable dispute ;

[C]

District process procedure to present third party descrip-

[continued on page; 5 of; 9]

[cont-] "PRACTICE ROUTINE']

[p.5]

[C]

tions to further, about stage of opportunitys whole

[1]

"Third-party practice

is the trial rule 14-B" dialogue of Mr. "Ahmad Edwards" [C.E.O]

[2]

Process unanimous asto deliberate apon the "face"; before judge to open split recall thereof lawyers ;

[continued on page; 6 of;9]

[cont-] "PRACTICE ROUTINE"]

[p.6]

[C][3]

Petition parties file under or opening provision by private orders to be partner ;

[D]

Sitting split up task recall by mentioned before imagination seen relatively on; 06\03\2002 ; more in language of court listing or the listing of another court in the state maintaining willing to serve;

[continued on page; 7 of; 9]

[cont-] "PRACTICE ROUTINE"]

[p.7]

[E]

Remaining cross-claim to enter into as written to be filed therein with signatures concerning non-binding and or binding preferred yet clearly the end of time common to the law submited by location ;

[8]

"Where no jurisprudential fall backs are; refinement shall help us resolve such an award"\

[continued on page ;8 of;9]

[cont-] "PRACTICE ROUTINE"]

[p.8]

[8] Mr. "Ahmad Edwards":

"Cooperation of bearing powers asto uncertain situation thins liability-" there a phone is privileged the matter to discusse actions cause."

: Mr. "Jason Majors":

: Comments of chief executive officers within part [8] ~~of this~~

[continued on page; 9 of;9]

[cont-] "PRACTICE ROUTINE"]

[p.9]

[8] this routine practice;

[9] 8:10;AM and\or;0810;HR

: quarm : ajurned : .

"We affirm, under the penalties for perjury, that the foregoing representations are true.

/s/ Mr. Jason Majors
Mr. Jason Majors
[C.E.O]

s/ Ahmad Edwards"
Mr. Ahmad Edwards
[C.E.O]

Dwight William Schuster M.D.

1016 TUCKAHOE
INDIANAPOLIS, INDIANA 46260
(317) 259-1584

The Honorable Grant Hawkins, Judge
Marion County Superior Court
Criminal Division, Room Five
City-County Bldg.
Indianapolis, Indiana 46204

December 31, 2002

Re: Ahmad Edwards
Cause Number 49G05-9907-CF-121975
Dear Judge Hawkins:

Pursuant to your appointment I have re-examined the above named defendant as to his competency to stand trial and as to his soundness of mind at the time of the alleged offense. My examination was carried out in a semi-private area of the Marion County Jail under satisfactory conditions. It was supplemented by a review of the Probable Cause Affidavit, a review of my two previous examinations of Mr. Edwards which included information from Logansport State Hospital with Psychological assessment in December, 2000.

Mr. Edwards recognized me from our previous meetings and understood the purpose of our meeting. He was agreeable to the exam and the report being sent to the Court. When questioned as to how he was at the time of the examination and what had happened since our last meeting on September 20, 2001 he told me that he had been experiencing headaches and shortness of breath and fainty

feelings. These sensations "come and go". He said he had been taken to Wishard Hospital in November, 2002 and examined. I reviewed a report from Wishard Hospital which said Mr. Edwards had been seen in the Emergency area and diagnosed with tension headaches on November 25, 2002. Their examination was negative for a serious condition and he was prescribed Ibuprofen for pain relief.

When questioned as to his present mental state, Mr. Edwards told me that "I'm able to do whatever is necessary to complete but quality is deteriorating and the light headedness comes on". He told me that he had seen a psychologist, Dr. Trexler and had been taken to Wishard Hospital on two occasions for testing. I know that Dr. Trexler does do neuro-psychological testing which it appears that Mr.Edwards received. I have not

seen the results of those tests. Mr. Edwards is in educational classes at the Jail and he was not in protective custody as he was when seen in September, 2001.

Mental status examintion on December 16, 2002 revealed a well nourished man who did not appear to have any overt physical difficulties. He was alert, coherent and cooperative. He spoke easily and in great detail. His mood and affect were appropriate for the content of his thought and his situation. There were no unusual verbalizations or behavior during the examination which was one hour and a quarter in length. He went into obsessive detail about his life and actions in July, 1999. His accounting of his actions on July 12, 1999 was very much the same as

he related it to me on September 20, 2001. He stated that he knew that what he did that day was "illegal". In his words, " On the way out (of the store) I stole a pair of men's shoes. It was out of character for me to disvalue the authority of a major store and destroy or take their property.". He went on to describe the details of being chased and eventually being shot.

When questioned as to his understanding of legal procedures and his ability to stand trial he spoke in some detail about the adversarial nature of a trial and he said "I know the statements in the Probable Cause Affidavit to be the truth". He alleged he had not seen his attorney or anyone from his office for the past six months and he said that he, Mr. Edwards, had written out a request to be re-examined. He admitted that nothing in his life had changed since he had last talked with me. He expressed understanding that "the acts I committed that day were wrong" in referring to July 12, 1999.

I did not carry out a neurological exam of Mr. Edwards but my observations of his physical behavior and his ability to communicate and verbalize his thoughts and feelings did not suggest any gross impairment of his nervous system. He did make reference to his having been in an auto accident in 1995, "or maybe 1993", and his description sounded like he had had a scalp laceration which required sutures, but he was not an in-patient in a hospital nor did he receive any follow up treatment. By history he does have a Learning Disability but I have no school records or other objective reports on that.

Diagnostically Mr. Edwards presents as having a Personality Disorder, NOS. which means essentially that he has mixed personality traits such as

obsessiveness and histrionics. I found no indication of delusional ideation or psychotic thinking or of Organic brain disorder.

Ahmad Edwards – Cause # 9907-121975

OPINION:

AS a result of my examination it is my opinion with reasonable medical certainty that Ahmad Edwards is competent to stand trial at the is time and that he was of sound mind, in the legal sense of that term, on or about July 12, 1999 in that he was not suffering from a mental disease or defect which impaired his appreciation of the wrongfulness of his conduct.

Sincerely,

/s/ Dwight W. Schuster
Dwight W. Schuster M.D.

NED P. MASBAUM, M.D.
Forensic Psychiatry
P.O. BOX 3010
CARMEL, INDIANA 46082 USA
TELEPHONE (317) 846-7727 FAX (317) 575-1898
TOLL FREE (888) 203-7746
Web Site: www.FORNPSYCH.com
December 9, 2002

<<stamped>> FILED JAN 10 2003 <<signature>>
Doris Ann Sadler

Honorable Grant Hawkins, Judge
Marion Superior Court Criminal 5
W-305 City County Building
200 East Washington Street
Indianapolis, Indiana 46204

Re: Ahmad Edwards B/M 1/29/73 Cause No. 49G05-9907-CF-121975

Dear Judge Hawkins:

In accordance with your order, the above individual was seen for a Psychiatric Examination.

PURPOSE OF EXAMINATION:

Provide an opinion regarding soundness of mind at the time of the alleged offense(s).

Provide an opinion regarding Competence to Stand Trial.

CHARGES AGAINST THIS INDIVIDUAL:

Count I: Attempt Murder, Class A Felony, 7-12-99

Count II: Battery, Class C Felony, 7-12-99

Count III: Criminal Recklessness, Class D Felony, 7-12-99

Count IV: Theft, Class D Felony, 7-12-99

QUALIFICATIONS OF EXAMINER:

Enclosed please find a copy of my resume that states my qualifications to provide a psychiatric opinion regarding this individual.

DATE OF EXAMINATION:

12-9-2002

LOCATION OF EXAMINATION:

Marion County Jail, under satisfactory conditions.

DURATION OF EXAMINATION:

Approximately two (2) hours.

RECORDS AND INFORMATION AVAILABLE FOR REVIEW:

1.) Copy of the Probable Cause Affidavit and Charging Information.

2.) Copy of this individual's Criminal History.

3.) Copies of my previous Court Ordered Forensic Psychiatric Examinations dated, 12-22-99 & 10-3-2001.

Re: Ahmad Edwards B/M 1/29/73 Cause No. 49G05-9907-CF-121975

IDENTIFICATION DATA:

This individual provided the following information:
NAME: Ahmad NMN Edwards
AGE: 29
DOB: 1-29-73
SSN: 309-78-9239

This individual was advised that this was a court ordered non-confidential psychiatric examination and agreed to proceed.

ACCOUNT OF THE ALLEGED OFFENSE(S) BY THIS INDIVIDUAL:

He said, "That morning, I started to see delusions...I seen (sic) a black cloud above me that began to rain inside the apartment...I knew something was wrong...my sister (with whom he lived in an apartment) was abusing drugs...have you heard of second degree smoke...(my) sister had a habit with Cocaine...I didn't use any...(my) sister had a one room apartment...I left the apartment that morning...I had to deal with financial problems...I was extremely hungry...I went to the church (soup kitchen) at 38th and Meridian...I got a small bowl of soup and bread...I had no money. I had to walk. I walked straight down Meridian...I was to meet this guy between 10 AM and 12...I ran non stop downtown to the Circle Center Mall...I was a track runner in high school...I couldn't find the guy...in the general area of the food court...I was to talk to him about a full time career in entertainment...I have knowledge and experience in the entertainment industry...his name was Carlos or something like that...Carlos said that he was an illegal alien from Cuba...I couldn't find him...I was so tired from the walk...run there...it was kind of like sleep walking before I would fall asleep...I had my firearm on me...I always carried it...Carlos didn't show up...I waited around the food court 4-5 hours...I was in the process of leaving...I went through the Parisian exits...I picked up some property...I picked up a pair of shoes...I probably

subconsciously wanted them but I was coming in and out of a spell."

When asked if he knew it was wrong at that time to take the shoes, he said, "At the time I had no opportunity to consider it...I had enough thinking power to stop myself...I was extremely weak...in the beginning of the day I felt so weak...I couldn't get out the door (Parisian)...I was not breathing correctly...I wanted to lay down...I caught my breath...I got outside...I was attacked in the middle of the street...I was grabbed by this guy who worked for the Parisian...doing his job...after this crazy man...maniac trying to run off with shoes...we wrestled in the street...I believe I shot him."

When asked about his present status regarding the alleged offenses, he said, "It is a question of my insanity. I've been having trouble with competency...it may be...the reason...of mental illness in my family...I mean physically competent...staying awake and alert...I feel a lot of stress and strain of what's going on in the Court Room...I'm not understanding some of the charges...I don't know how to explain it...I don't know how to defend myself...I know what murder is and I know all the things alleged were definitely wrong...I know trying to murder someone should never be. I know property belongs to a person and not another. I don't know how a person handles it in Court. At the hospital in Logansport, I wasn't comfortable...in the quality of the courses there...I was there 3 months...one of the instructors there said it takes 6 months to get a person to become competent. My new trial date is January 15th...I'm looking at

Re: Ahmad Edwards B/M 1/29/73 Cause No. 49G05-9907-CF-121975

attempted murder, battery, criminal recklessness and theft. I was taught right from wrong. I don't understand how to get out of the situation. Is there some way for a man to defend himself to get out and receive some kind of mercy for the act...I don't know if a man has a natural instinct to defend himself...the charges are putting me in danger of my right to liberty. I know it was wrong. If I could just have a chance to learn from someone...I want some help...I'm having a pain in my forehead where I was scared there...an accident in 1995...an auto crash...a windshield lodged in my forehead...(treated) in ER visit only...I had a case of amnesia...didn't remember who I was a few years...that went into depression."

PAST MEDICAL HISTORY:

See report of prior exam. He is receiving no psychotropic medication at this time in jail. He said that he had been seen at Wishard last week due to headaches.

PERSONAL HISTORY:

See report of prior exam.

MENTAL STATUS EXAMINATION:

He was a black male who said that he was 5 ft 4 in tall and weighed 150 pounds which he said was down from a prior weight of 190-195 pounds before incarceration. He had a short haircut; he was neat in appearance, clean shaven and wearing clean orange jail garb. He was not in handcuffs. He was friendly, extremely polite, alert, cooperative and recognized me from past exams and testimony. He had no

disorganized speech. However, he rambled and provided much extraneous information spontaneously about his mother's medical problems, family "SMI" which he defined as "serious mental illness...in the blood...they say I am pretty delusional...I feel like some things...I can't think straight...effectively due to stress and depression...I believe I might drop dead...fall into coma...I was in a comatic stage...in and out of coma on the day of the crime." His demeanor was consistent with a personality disorder. He had no hallucinations at this time. He was able to apply abstract interpretations to proverbs. He was oriented. Although he said that he experienced memory problems, he demonstrated no memory deficit of recent nor remote events. When asked to perform some simple calculations, he tapped the left side of his forehead and said, "I've been having jerking right before a headache." He was able to determine the correct change from a dollar for a purchase. He could subtract only serial one 7 from 100 but subtracted 3 serial 3's from 20. He was able to name our President Bush. He was able to draw simple geometric designs that demonstrated no neurologic deficit.

Although he said that he did not understand the charges, his discussion of the charges demonstrated that he did understand the charges against him. He understands the charges are serious. He understands that if he is found guilty that he could receive a significant sentence. He understands the Criminal Proceedings. He understands a Plea Agreement and that it is a guilty plea. He was able to provide reasonable definitions of the roles of the Judge, Jury, Witnesses, Prosecutor and Defense Attorney.

DIAGNOSTIC IMPRESSION:

1.) Delusional Disorder, Grandiose Type 297.1, improved

2.) Personality Disorder NOS 901.9, Probable Malingering V65.2

Re: Ahmad Edwards B/M 1/29/73 Cause No. 49G05-9907-CF-121975

PSYCHIATRIC OPINION:

It is my opinion, based on reasonable medical certainty, that this individual, in spite of his disorders, does have comprehension sufficient to understand the nature of these proceedings. He is able to aid his attorney in his defense in accordance with I.C. 35-36-3-1.

Furthermore, it is my opinion, based on reasonable medical certainty that this individual, in spite of his disorders, was of sound mind at the time of the alleged offenses. He was able to appreciate the wrongfulness of his conduct at that time in accordance with I.C. 35-41-3-6.

Sincerely,

/s/ Ned P. Masbaum, M.D.

Ned P. Masbaum, M.D.

NPM/em

	)	IN THE MARION
MR. "AHMAD	)	SUPERIOR COURT
EDWARDS"	)	ROOM NO. 5
V.	)	CAUSE NO
THE STATE	)	496059907
OF INDIANA	)	CF12975

<<stamped>> FILED MAR 21 2003 <<signature>>
CLERK OF THE MARION CIRCUIT COURT

"ADMISSION OF FACTS
AND NOTICE OF DEFENSE
OF MENTAL DISEASE AND
OR DEFECT"

[p.1]

The defendant, Mr. "Ahmad Edwards" by counsel, does hereby freely and voluntarily admit that the following facts are true:

[continued on page;2 of ;7]

cont-"ADMISSION OF FACTS
AND NOTICE OF DEFENSE
OF MENTAL DISEASE AND
OR DEFECT"

[p.2]

1. Evidence exists and the court should not deny and observe its results as scientific.
2. That for a judge the defendant biological systems are possible to conceive by testimony highly intelligent witch also draws a conclusion written.
3. The complexity of the

[continued on page;3 of; 6 7]

cont-"ADMISSION OF FACTS AND NOTICE OF DEFENSE OF MENTAL DISEASE AND OR DEFECT"

[p.3]

3. simplest known type blood cell is so great in the defendant it is not impossible to accept such blood cells of molecular chemical composition has been the reason for his conduct.

4. The element of the functional gene would be complex beyond a juries capacitie of intelligence.

[continued on page; 4 of; 7]

cont-"ADMISSION OF FACTS AND NOTICE OF DEFENSE OF MENTAL DISEASE AND OR DEFECT"

[p.4]

5. The complexity of the defendant Mr. Ahmad Edwards blood systems are not the only manifested issue, Independently a function of\his inability that result in behavior reasoning, judgment deterioration "obvious" or impairment "substantial" and needs of human essential shelter, clothing, food, he is unable to provide for he is in danger of coming

[continued on page;5 of;7]

cont-"ADMISSION OF FACTS AND NOTICE OF DEFENSE OF MENTAL DISEASE AND OR DEFECT"

[p.5]

5. to harm as a result of mental illness the means of a condition in which an individual, is gravely disabled."

The defendant further says and hereby gives notice pursuant to Indiana Code [I.C.] sole defense is that he is not responsible under Indiana Code [I.C.] 35 41-3-6 for his conduct because he lacked the

[continued on page;6 of;7]

cont-"ADMISSION OF FACTS AND NOTICE OF DEFENSE OF MENTAL DISEASE AND DEFECT"

[p.7]

5. Substantial capacity to appreciate the wrongfulness of his conduct and\or to comform his conduct to the requirements of t law, as the result of a mental disese and or defect.

[Attorney]

We affirm, under the penalties for perjury that the foregoing representations are true.

Date 03/19/2003 /s/ Ahmad Edwards
Mr. Ahmad Edwards

Mr. "Ahmad Edwards"
GA #494657
Marion County Jail
40 South Alabama Street
Indianapolis, Indiana
46204

March 19, 2003

Clerk of Court
Criminal Division 5
200 East Washington
Street Indianapolis
Indiana 46204

Re: "ADMISSION OF FACTS AND NOTICE OF DEFENSE OF MENTAL DISEASE AND OR DEFECT "CAUSE NO. 496059907CF12975

[continued on page;2 of;2]

[p.2]

Dear Clerk:

Enclosed you will find the original of this "ADMISSION OF FACTS AND NOTICE OF DEFENSE OF MENTAL DISEASE AND OR DEFECT." Please, cause this document to bear the courts seal and present it to the court for its consideration returning a file marked copy to myself.

Thank you for your time and attention to this filing.

Sincerely, /s/ Ahmad Edwards

Mr. Ahmad Edwards

cc: file

~~cont "ADMISSION OF FACTS AND NOTICE OF DEFENSE OF MENTAL DISEASE AND OR DEFECT"~~

~~[p.6]~~

~~5. duct which took the life of~~

	) IN THE MARION
	) SUPERIOR
MR. "AHMAD	) COURT ROOM
EDWARDS"	) 5 CRIMINAL
	) DIVISION
PETITIONER.	)
V.	) CAUSE NO.
	)496059907
THE STATE OF	) CF121975
INDIANA	)
RESPONDENT.	)

<<stamped>> FILED MAY 14 2003 <<signature>>
CLERK OF THE MARION CIRCUIT COURT

<<written>> 15 May 03 Denied <<GWH>>

"PETITION FOR HEARING
UNDER IC 12-26-12-2"

[AGENCY FORM [M-Z]

[p.1]

[continued on page; 2 of;5]

"PETITION FOR HEARING
UNDER IC 12-26-12-2"
[AGENCY FORM [M-Z]

[p.2]

A therapy order has been issued on the petitioner Mr. Ahmad Edwards is entitled to a review of the order for the petitioner to enter a therapy program under § 1 [IC 12-26-14-1]

At the review of the order the petitioner is entitled to present evidence concering his mental condition under [I C 12-26-12-6]

[continued on page;3 of;5]

"PETITION FOR HEARING
UNDER IC 12-26-12-2"

[AGENCY FORM [M-Z]

[p.3]

If a hearing is not held within twenty [20] days of the filing of this petition the court shall discharge the petitioner Mr. Ahmad Edwards under [I.C. 12-26-12-5]

The petitioner or the patient Mr. Ahmad Edwards therein the Marion County Jail has given identifying information to the health officer or agent of the health officer or superintendent that witch determines the petitioner

[continued on page ; 4 of; 5]

"PETITION FOR HEARING
UNDER IC 12-26-12-2"

[AGENCY FORM [M-Z]

[p.4]

The petitioner alleged to be mentally ill has the right to be present at the review hearing relating to the petitioners mental health or well-being under [IC 12-26-2-2]

The petitioner has been the subject of commitment orders and judgment proceeding on April 29, 2003

[continued on page; 5 of; 5]

"PETITION FOR HEARING
UNDER IC 12-26-12-2"

[AGENCY FORM [M-Z]

[p.5]

The petitioner Mr. Ahmad Edwards has the right to exercise the rights described in the 42 § 10841 without reprisal including reprisal in the form of denial of any appropriate, available treatment.

WHEREFORE the petitioner commands this court to set this matter for hearing.

"I affirm under the penalties for perjury, that the foregoing representations are true

/s/ Ahmad Edwards"
Mr. Ahmad Edwards
[petitioner]

"ORDERS TO THE CLERK"

Dear : Clerk Please

1] Copy and file this petition for hearing under I.C. 12-26-12-2 ;

2] and return a filed stamped copy to me the petitioner Mr. Ahmad Edwards

"Thank you" and have a happy Mother's Day!

/s/ Ahmad Edwards
Mr. Ahmad
Edwards
[Petitioner]

STATE OF INDIANA	)	IN THE MARION
COUNTY OF MARION	)	COUNTY SUPERIOR
STATE OF INDIANA	)	COURT
VS.	)	SS: CRIMINAL
AHMAD EDWARDS	)	DIVISION, ROOM 5
	)	CAUSE NO. 49G05-9907-
	)	CF-121975

<<stamped>> FILED NOV 24 2003 <<signature>>

FINDINGS OF FACT

A hearing on the competency of defendant, Ahmad Edwards, was held on April 29, 2003.

1. Three (3) psychiatrists and one (1) psychologist testified at that hearing, namely Dr. Dwight Schuster, Dr. Ned Mausbaum, Dr. Phillip Coons and Dr. Lance Trexler.

2. All of the doctors indicated that Ahmad Edwards had a delusional disorder.

3. Dr. Schuster testified that Ahmad Edwards has a delusional disorder and that he had the delusional disorder before the original finding of incompetency at a prior hearing in this case. Following that hearing Ahmad Edwards was found incompetent and transferred to the Logansport State Hospital for evaluation and treatment.

4. Dr. Schuster testified that upon reexamination for the hearing, Ahmad Edwards still has a delusional disorder, but it was improved. Dr. Schuster was unable to comment on the treatment received by Ahmad Edwards while placed at

Logansport State Hospital. Dr. Schuster thought Ahmad Edwards competent to stand trial.

5. Dr. Mausbaum likewise diagnosed Ahmad Edwards on having a delusional disorder before his first finding of incompetency. According to Dr. Mausbaum that disorder persists to the present. Dr. Mausbaum testified that Ahmad Edwards received no medication and no formalized therapy while at Longansport State Hospital.

6. Both doctors Schuster and Mausbaum described Ahmad Edwards communication skills as loose and convoluted. Dr. Mausbaum recalled Ahmad Edwards describing a "protrusion" from his head that Dr. Mausbaum observed did not exist.

7. Dr. Coons, Professor of Psychiatry at Indiana University Hospital, examined Ahmad Edwards prior to this hearing and reviewed Ahmad Edwards' medical records from Logansport State Hospital.

8. Dr. Coons indicated that within a reasonable degree of medical certainty a delusional disorder could not be corrected without intervention involving medication.

9. While at the Isaac Ray Unit, Logansport State Hospital, Ahmad Edwards received no medication that would address the delusional disorder.

10. Dr. Coons testified that found Ahmad Edwards to have a schizophrenic disorder, delusional type. This disorder is evidenced by loose, convoluted thinking, perhaps hallucinations and, in this case, delusions.

11. Dr Coons stated that Ahmad Edwards manifests all such symptoms of this disorder and that Ahmad Edwards' condition is not likely to improve without medications and therapy. Ahmad Edwards' condition prevents him from being able to understand and meaningfully function in the legal system. Ahmad Edwards' condition prevents him from being able to understand and meaningfully communicate with his attorney about this case.

12. Dr. Coons further stated that review of the record of Ahmad Edwards, while at Logansport State Hospital, Isaac Ray Unit, disclosed:

    a. That there was no therapeutic intervention with medication or otherwise; and

    b. That the records were filled with notes from professional staff people at the Isaac Ray Unit of bizarre, convoluted, loose and delusional thoughts and communications.

13. Dr. Lance Trexler, a neuropsychologist interviewed Ahmad Edwards before and after his placement with the Isaac Ray Unit at the Logansport State Hospital. He also tested Ahmad Edwards for brain damage. Dr. Trexler agrees that:

    a. That Ahmad Edwards is incompetent in that he cannot communicate meaningfully about his case;

    b. That he certainly has a delusional disorder and is most likely schizophrenic;

    c. That Ahmad Edwards also has possible brain damage that needs to be tested after

therapeutic intervention. This needs to be done to rule out brain damage as a possible cause of his incompetency; and

d. That Ahmad Edwards did show signs of a neuropsychological deficit.

14. Mark Jones, an attorney and public defender in Marion County and formally one of Ahmad Edwards' appointed counsel, testified that:

a. He felt Ahmad Edwards was not competent to stand trial;

b. He never had been able to hold a meaningful conversation with Ahmad Edwards about the case;

c. He agreed with the description of Ahmad Edwards' communication and thoughts being loose, convoluted, delusional and generally not making any sense; and

d. He felt Ahmad Edwards is incapable of meaningful communication about his legal situation.

CONCLUSIONS OF LAW

STATE OF INDIANA	)	IN THE MARION
COUNTY OF MARION	)	SUPERIOR COURT
	)	SS:
	)	CRIMINAL DIVISION,
STATE OF INDIANA	)	ROOM V
VS.	)	THE HONORABLE
<<written>>	)	<<written>> GRANT
AHMAD EDWARDS	)	HAWKINS JUDGE
	)	CAUSE NO. <<written>>
	)	99121975

<<stamped>> FILED NOV 24 2003 <<signature>>

COMMITMENT ORDER
INDIANA DEPARTMENT OF MENTAL HEALTH

TO THE MARION COUNTY SHERIFF:

This cause came to Court for hearing on Court's own Motion for Psychiatric Examination alleging the Defendant has insufficient comprehension to understand the nature of the criminal action against him and the proceedings therein. Evidence was submitted on the oral testimony and written reports of two competent disinterested psychiatrists. Court did find that the Defendant does not have sufficient comprehension to understand the nature of the criminal action against him and the proceedings therein and to make his defense.

IT IS THEREFORE, ORDERED, AJUDGED, AND DECREED, that the Defendant, <<written>> Ahmad Edwards, be committed to the care and custody of the Indiana Department of Mental Health for evaluation and treatment, and the Indiana Department of Mental Health is hereby directed to file a written

report to this Court within a period of ninety (90) days stating therein its findings as to whether or not there is substantial probability that he will attain the capacity to understand the proceedings in the foreseeable future.

IT IS FURTHER ORDERED by the Court that Indiana Department of Mental Health continue to evaluate <<written>> A. Edwards, and if he is unable to understand the proceedings and assist in the preparation of his defense within six (6) months after the date of his admission to a psychiatric institution, the Department of Mental Health shall institute regular commitment proceedings under IC 16-14-9.1.

/s/ G Hawkins

Honorable <<written>> G. Hawkins, Judge
Marion County Superior Court
Criminal Division, Room Five

DATE: <<written>> 11-24-03

<<masthead>>
Indiana Family & Social Services Administration
"People helping people help themselves"

Joseph E. Kernan, Governor
State of Indiana
Logansport State Hospital
Division of Mental Health and Addiction
1098 S. STATE ROAD 25
LOGANSPORT, IN 46947-9699
574-722-4141
FAX: 574-735-3414
TDD: 574-732-0069

<<stamped>> FILED JUN 01 2004 /s/ Doris Anne Sadler

IMPORTANT MEDICAL INFORMATION ENCLOSED

May 28, 2004

Honorable Grant W. Hawkins
Marion Superior Court, Criminal Div. #5
2[illegible]0 East Washington St., Room W-305
Indianapolis, IN 46204

Dear Judge Hawkins:
Re: Ahmad Edwards
Cause # 49G05-9907-CF-121975

Attached please find a copy of Ahmad Edwards' Comprehension to Stand Trial Report completed by Robert J. Sena, M.D.

After three months hospitalization, Mr. Edwards has not been found competent to stand trial, but the possibility of his becoming competent does exist. Therefore in accordance with IC 35-36-3-3, we have not petitioned the court for commitment proceedings, but will submit a report six months from the date of his admission to this hospital.

Sincerely,

/s/ Jeffrey H. Smith
Jeffrey H. Smith, Ph.D.
Superintendent
Cc: Steve Sarris, IDMH, Legal

Enclosure

I swear and affirm, under the penalties of perjury, that the foregoing statements are true to the best of my knowledge and belief.

<<written>> 5-28-04
/s/ Jeffrey H. Smith

<<written>> 1 Jun 04
Copy to all
counsel record!
GWH

Indiana Family and Social Services Administration
Logansport State Hospital
Logansport, IN

Comprehension To Stand Trial Report
5-28-04

IDENTIFYING DATA:

Ahmad (NMN) **Edwards** is a 31 year-old single black male from Marion County (Indianapolis, IN), who was admitted here to the Isaac Ray Treatment Center (IRTC) of Logansport State Hospital (LSH) on 1-27-04, after being found to have Insufficient Comprehension to Stand Trial on 11-24-03 in the Marion Superior Court, Criminal Division Room 5, under Cause No. 49G05-9907-CF-121975.

He has the following 4 pending charges arising from this reported behavior on or about 7-12-99:

- Attempt Murder (Class A Felony)
- Battery (Class C Felony)
- Criminal Recklessness (Class D Felony)
- Theft (Class D Felony)

SOURCES OF INFORMATION:

1. My face-to-face interviews of Ahmad Edwards at LSH/IRTC lasting 1 hour 45 minutes on 5-27-04 and 40 minutes on 5-8-04.
2. His medical records at LSH/IRTC, including his hospital chart of 1-27-04 to 5-28-04.
3. The Commitment Order dated 11-24-03.
4. The Findings of Fact and Conclusions of Law in Marion Superior Court, Criminal Division, Room 5, dated 11-17-03.

5. The Confinement Authority Order of the IFSSA dated 12-8-03.
6. The Information sheet for the charges dated 7-15-99.
7. The Affidavit for Probable Cause dated 7-12-99.
8. The Criminal History report dated 7-13-99.
9. The Neuropsychological Examination report by Lance E. Trexler, Ph.D. dated 2-23-00.
10. The competency to stand trial report by Dwight W. Schuster, M.D. dated 10-2-01.
11. The Psychiatric Examination report by Ned P. Masbaum, M.D. dated 12-9-02.
12. The Psychiatric Evaluation by Philip M. Coons, M.D. dated 11-26-02.
13. Ahmad Edwards' LSH/IRTC records from his admission of 12-12-00 to 3-27-01 under the psychiatric care of Steven H. Berger, M.D.

STATEMENT OF NON-CONFIDENTIALITY:

Mr. Edwards was advised that the purpose of the interviews of 5-27-04 and 5-28-04 was to determine whether he now has sufficient comprehension to stand trial. He understands and agrees that any relevant information obtained would not be confidential because it would be shared with the court.

PRESENT CONDITION:

Mr. Edwards is presently calm and cooperative. He is able to participate appropriately in lengthy forensic interviews today and yesterday. However, he is

manifesting psychotic symptoms of hallucinations and

Ahmad Edwards, #3915
DOA: 1-27-04
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disorganized thought processes. Despite his mental disorder, he responds positively to psychoeducation and pharmacologic recommendations.

PHYSICAL HEALTH:

No serious physical health problems at this time. He reports a history of severe pain in his left frontal scalp area after head injury in a motor vehicle accident, and neurological pain in his left leg after a gunshot injury. Both of these pain areas have improved significantly under treatment with Trileptal and Motrin in recent months.

COURSE OF TREATMENT:

Mr. Edwards has been under active treatment here since his admission on 1-27-04, and he is receiving the full program of pharmacotherapy, individual and group psychotherapy, counseling from the professional staff of the various disciplines, milieu therapy, and educational classes in Legal Education, Coping Skills, Anger Management, Social Skills, ICST Groups, Men's Issues, and Recreational Therapy.

He has been treated here for the past 4 months for the following problems:

- Schizophrenia, with symptoms of disorganized thought processes, delusional ideation,

hallucinations, and ideas of reference. These symptoms responded well to treatment with Zyprexa 20 mg per day. However, Zyprexa was stopped after he developed side effect problems. Then he was prescribed Abilify starting on 4-23-04. In the past 2 weeks, he has been experiencing a recurrence of frequent and bothersome visual hallucinations, and occasional auditory hallucinations.

- Depression, with symptoms of suicidal ideation, low self esteem, irritability, and sadness. These symptoms have been substantially relieved by Wellbutrin SR 300 mg per day.
- Neuropathic pain in the scalp and left leg (he reports a history of severe pain in his left frontal scalp area after head injury in a motor vehicle accident, and neurological pain in his left leg after a gunshot injury). Both of these pain areas have improved significantly in recent months under treatment with Trileptal 600 mg twice per day and Motrin 800 mg twice per day.
- ICST status. He is progressing in his comprehension of his charges and the court proceedings in his case. On 5-26-04, he passed the final written examination in Legal Education II on the 4th attempt, answering 61 questions correctly out of 75.

Concerning his behavior in the past 4 months, he has received only 1 restriction for a rule violation, which occurred on 2-9-04 and which was likely triggered by his mental disorder. He has not been physically aggressive here. He is generally described as polite and cooperative.

PRESENT MEDICATION:

1). Abilify 15 mg each morning for Schizophrenia.

2). Prolixin 5 mg twice per day, added on 5-28-04 for Schizophrenia.

3). Wellbutrin SR 150 mg twice per day for depression.

4). Trileptal 600 mg twice per day for neuropathic pain in the scalp and left leg.

5). Motrin 800 mg twice per day, added on 4-12-04 for left leg pain.

6). Benadryl 50 mg each day at bedtime for insomnia.

MENTAL STATUS EXAMINATION:

Appearance: He appears to be a black male in his early thirties, who is 64" tall and weighs 165 lbs. He has very short (1/8 inch) black hair, brown eyes, 1 or 2 day beard stubble, good grooming, and good eye contact.

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Attitude: Cooperative.
Behavior: Unremarkable.

Speech: His speech is easy to hear and understand. He is talkative, and will elaborate extensively (if permitted to do so) when answering questions, becoming circumstantial and tangential in the process.

Thought processes: His speech reveals disorganized thought processes of a mild to low-moderate degree, For example, when I asked him will he be able to assist his attorney, he answered "The communication is still not there, for accuracy. It will be an overwhelming prejustice (sic) case for me and my attorney."

Thought content: He voices some delusional ideation, such as (1) "I used to manage country music" (2) "The charges were dismissed" and (3) "The bone shifts (referring to the left frontal area of his scalp)".

Perceptual abnormalities: He reports having bothersome, frequent "visions", i.e. visual hallucinations, and occasional auditory hallucinations. He admits having a history of ideas of reference, thinking that people on television were talking to him or about him.

Mood/affect: Mood appears to be level (normal). His affect is appropriate to thought content. He shows no tearfulness, no anger, and no laughter. He smiles occasionally.

Impulse control: No problems in this area during the interview.

Suicidal and/or homicidal behavior/ideation: He denies having any present suicidal or homicidal ideation, and there is no evidence that he has any present desire, plan, or intention to harm himself or anyone else.

Cognitive functioning examination: He did not know the month or day, but knew the year. He recalled the exact date 5 minutes later after one prompt. He pays good attention. His memory is intact in all spheres

(immediate, recent, and remote). He states his exact charges and their felony levels.

Intellectual functioning: Low-average range.

Insight and judgment: Fair. He realizes that he has a mental illness, and he is agreeable to continue taking prescribed medications.

DIAGNOSES:

Axis I: Schizophrenia, Undifferentiated Type, 295.90 Depressive Disorder Nos, 311

Axis II: No diagnosis

Axis III: Posttraumatic neuropathic pain in the scalp and left leg

Axis IV: Pending legal problems

Axis V: Present Global Assessment of Functioning (GAF): 40 (indicating some impairment in reality testing and communication) Highest GAF in past year: 40.

McGARRY CRITERIA:

The following are the McGarry criteria for competence, and my determination of whether he fulfills each criterion. My determination is based upon my judgment regarding the information gathered during my interview with him, and information found in his psychiatric record.

1. Does he have the ability to appraise the legal defenses available to him? Yes. He is able to name his attorney, and acknowledges that he needs the attorney's help for his criminal case.
2. What is the level of his unmanageable behavior? Absent.
3. What is the quality of the anticipated manner in which he will relate to his attorney? He will likely be willing to assist his attorney, but due to his present impairments of disorganized thought processes, delusional ideation, and bothersome hallucinations, his ability to discuss important and necessary matters with his attorney, and to remain focused on those matters, will likely be compromised to a significant degree.
4. Does he have the ability to plan a legal strategy? Yes, in cooperation with his attorney, but subject to the same impairments explained in #3.
5. Does he have the ability to appraise the roles of the participants in the courtroom proceedings? Yes, to a fairly good degree.
    a) For example, when asked to explain the role of the prosecuting attorney in the courtroom, he responded "He is to get the conviction of the defendant, to represent the state. He introduces evidence against me."
    b) The role of the defense attorney is "He represents the defendant, he objects, introduces evidence."
    c) The role of the judge in the trial is: "To preside over the court. He works with the sentences at the end. He rules on objections."

d) Will you get a fair trial? "No." Why? "Due to security."

e) He shows a good understanding of the role of a jury.

6. Does he understand the procedures of court? Yes, to a fairly good degree. He understands that the attorneys will call witnesses and question them in the trial. He understands about the cross-examination of witnesses, the raising of objections, and the rulings on objections. He understands when he should speak in the courtroom, and when he should not speak. He understands the meaning of a plea bargain.

7. Does he have an appreciation of the charges against him? Yes. He correctly states his exact charges and their severity levels. He understands the seriousness of the charges.

8. Does he have an appreciation of the range and nature of the possible penalties he faces? Yes. He cites an accurate sentence total if he is convicted of all charges.

9. Does he have the ability to appraise the likely outcome of the charges against him? Yes.

10. Does he have the capacity to disclose to his attorney available pertinent facts surrounding the offense? Yes, but subject to the same impairments explained in #3.

11. Does he have the capacity to challenge prosecution witnesses realistically? Yes, but subject to the same impairments explained in #3.

12. Does he have the capacity to testify relevantly? Yes, but subject to the same impairments explained in #3.

13. Does he manifest self-serving motivation or self-defeating motivation? Self-serving motivation.

SUMMARY:

Ahmad Edwards is a 31 year-old single black male from Marion County (Indianapolis, IN), who was admitted here to the Isaac Ray Treatment Center (IRTC) of Logansport State Hospital (LSH) on 1-27-04, after being found to have Insufficient Comprehension to Stand Trial on 11-24-03 in the Marion Superior Court, Criminal Division, Room 5. He is charged with Attempt Murder (Class A Felony), Battery (Class C Felony), Criminal Recklessness (Class D Felony), and Theft (Class D Felony), arising from his reported behavior on or about 7-12-99.

Ahmad Edwards, #3915
DOA: 1-27-04
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He has been treated here for the past 4 months for Schizophrenia, depression, neuropathic pain in the scalp and left leg, and ICST status. His symptoms of Schizophrenia, which started before or during this teenage years, include disorganized thought processes, impairment in verbal communication, delusional ideation, hallucinations, and ideas of reference.

He continues to experience bothersome visual hallucinations and occasional auditory hallucinations. He continues to manifest disorganized thought processes, which impair his ability to communicate verbally. He voices some delusional material. His behavior is appropriate. He passed the final examination in Legal Education II on 5-26-04, answering 61 questions correctly out of 75.

Concerning his present comprehension to stand trial, my conclusions are as follows:

1). He understands his charges, their severity, and the possible sentence range if he is found guilty.

2). He has a fairly good understanding of the legal proceedings in his case.

3). He is demonstrating multiple problems with his mental status (including hallucinations, delusional ideation, and disorganized thought processes) which would likely significantly impair his ability to assist his attorney in the defense, and to render requisite attention in the courtroom proceedings.

OPINION:

Therefore, in my opinion, to a reasonable degree of medical certainly, Ahmad Edwards continues to manifest insufficient comprehension to stand trial. I estimate that there is a 65% probability that he will attain the ability to understand the proceedings and assist in the preparation of his defense within the next 2 months of treatment here.

/s/ Robert J. Sena
Robert J. Sena, M.D.

Staff Forensic Psychiatrist
Indiana Physician License
#01055412A
Diplomate, American Board
of Psychiatry and
Neurology, 1991
Logansport State
Hospital/Issac Ray
Treatment Center
5-28-04, rjs

<<masthead>>

Indiana Family & Social Services Administration

"People helping people help themselves"

Joseph E. Kernan, Governor
State of Indiana
Logansport State Hospital
Division of Mental Health and Addiction
1098 S. STATE ROAD 25
LOGANSPORT, IN 46947-9699
574-722-4141
FAX: 574-735-3414
TDD: 574-732-0069

<<stamped>> FILED JUL 29 2004 /s/ Doris Anne Sadler
IMPORTANT MEDICAL INFORMATION ENCLOSED
July 27, 2004

Grant W. Hawkins
Marion Superior Court, Criminal Division #5
200 East Washington Street, Room W-305
Indianapolis, IN 46204

Dear Judge Hawkins:

Re: Ahmad Edwards

Cause #: 49G05-9907-CF-121975

By my signature below, I certify that according to the report filed by Robert J. Sena, M.D., Mr. Edwards has attained the ability to understand the proceedings and assist in the preparation of his defense.

Pursuant to IC 35-36-3-2, we would respectfully request that your court enter an order directing the sheriff to return the defendant to your county jail, along with his personal belongings, at your earliest possible convenience. Please direct your county sheriff to notify the Isaac Ray Treatment Center no less than twenty four hours prior to the anticipated transport of this defendant. This notice will allow appropriate money, clothing, etc. to be ready upon arrival of county personnel.

Sincerely,

/s/ Robert E. Clover
Robert E. Clover
Authorized Designee for
Jeffrey H. Smith, Ph.D.
Superintendent
cc: Steve Sarris, IDMH
Legal

I swear and affirm, under the penalties of perjury, that the foregoing statements are true to the best of my knowledge and belief.

/s/ Robert E. Clover
<<written>> July 28, 2004

Indiana Family and Social Services Administration
Logansport State Hospital
Logansport, IN

COMPREHENSION TO STAND TRIAL REPORT
7-27-04

IDENTIFYING DATA & HISTORICAL RECAP:

Ahmad (NMN) **Edwards** is a 31 year-old single black male from Marion County (Indianapolis, IN), who was admitted here to the Isaac Ray Treatment Center (IRTC) of Logansport State Hospital (LSH) on **1-27-04**. He was sent here under Confinement Authority of the IFSSA after having been found to have Insufficient Comprehension to Stand Trial (ICST) on **11-24-03** in the Marion Superior Court, Criminal Division Room 5, under Cause No. 49G05-9907-CF-121975. He is charged with committing the following crimes on or about **7-12-99**:

- Attempt Murder (Class A Felony)
- Battery (Class C Felony)
- Criminal Recklessness (Class D Felony)
- Theft (Class D Felony)

SOURCES OF INFORMATION:

1. My face-to-face interviews of Ahmad Edwards at LSH/IRTC lasting 70 minutes on 7-27-04, 1 hour 45 minutes on 5-27-04, and 40 minutes on 5-8-04.
2. His medical records at LSH, including his hospital chart of 1-27-04 to 7-27-04.
3. The Commitment Order dated 11-24-03.
4. The Findings of Fact and Conclusions of Law in Marion Superior Court, Criminal Division, Room 5, dated 11-17-03.

5. The Confinement Authority Order of the IFSSA dated 12-8-03.
6. The Information sheet for the charges dated 7-15-99.
7. The Affidavit for Probable Cause dated 7-12-99.
8. The Criminal History report dated 7-13-99.
9. The Neuropsychological Examination by Lance E. Trexler, Ph.D. dated 2-23-00.
10. The competency to stand trial report by Dwight W. Schuster, M.D. dated 10-2-01.
11. The Psychiatric Examination report by Ned P. Masbaum, M.D. dated 12-9-02.
12. The Psychiatric Evaluation by Philip M. Coons. M.D. dated 11-26-02.
13. Ahmad Edwards' LSH/IRTC records from his admission of 12-12-00 to 3-27-01 under the psychiatric care of Steven H. Berger, M.D.

Ahmad Edwards, #3915
DOA: 1-27-04
DOB: 1-29-73
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STATEMENT OF NON-CONFIDENTIALITY:

He was advised of the purpose of the interview of 7-27-04, which was to determine whether he now has sufficient comprehension to stand trial. He agrees that any relevant information obtained would not be confidential because it would be shared with the court.

PHYSICAL HEALTH:

No serious physical health problems at present.

COURSE OF TREATMENT:

He has been under treatment here for the **problems** of:

(1) Psychosis (with symptoms of disorganized thought processes, delusional ideation, hallucinations, and ideas of reference)

(2) Neuropathic pain in the scalp and left leg (he reports a history of severe pain in his left frontal scalp area after head injury in a motor vehicle accident, and neurological pain in his left leg after a gunshot injury)

(3) ICST status.

His **treatment** includes medications, individual and group psychotherapy, counseling from the professional staff of the various disciplines, and educational classes. His medications have been adjusted several times to achieve optimal symptom improvement without causing side effect problems.

His present **medications** include:

- **Seroquel** 300 mg per day at bedtime for psychotic symptoms
- **Benadryl 50** mg per day for insomnia
- **Trileptal** 600 mg twice per day for neuropathic pain in the scalp and left leg
- **Motrin** 800 mg twice per day for left leg pain.

Currently, he attends **classes** in Legal Education, Psychology Education, ICST Groups, Men's Issues, Anger Management, Communication, Art, Social Skills, Coping Skills, Independent Living Skills, and Recreational Therapy.

Progress: He has made excellent progress in the past 2 months:

- His mental symptoms have greatly improved. As of 7-27-04, he reports that he no longer has hallucinations, delusions, and ideas of reference. His thought processes are no longer disorganized.

Ahmad Edwards, #3915
DOA: 1-27-04
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Page 2

- The pain in his scalp and left leg is under good control under treatment with Trileptal 600 mg twice per day and Motrin 800 mg twice per day.
- On 5-26-04, he passed the final written examination in Legal Education II on the 4th attempt, answering 61 questions correctly out of 75. He would likely score higher now if he took the test again.

Behavior: His behavior has been outstanding in recent months. He was cited for only 1 rule violation, which occurred on 2-9-04 and which was likely triggered by his mental disorder. He has not been physically aggressive here. He is polite and cooperative.

PRESENT CONDITION:

I interviewed him today (7-27-04) for 70 minutes. During the interview:

- He reports no ongoing serious problems.
- His mood is level (normal). He knows the exact date, place, and circumstances. He shows good attention. His memory is good in all spheres (immediate, recent, and remote). He cooperates well.

- He communicates very well. His speech is easy to understand.
- His thought processes are coherent.
- There is no evidence of present or recent hallucinations or delusions.
- He agrees to continue his medications.
- He would like to leave here and proceed to trial.
- I questioned him about forensic issues, and his answers appear below under McGarry Criteria.

PSYCHIATRIC DIAGNOSIS:

- **Schizophrenia, Undifferentiated Type 295.90***
- The number refers to the diagnosis in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR)

McGARRY CRITERIA:

The following are the McGarry criteria for competence, and my determination of whether he fulfills each criterion,

1. Does he have the ability to appraise the legal defenses available to him? YES. HE IS ABLE TO NAME HIS ATTORNEY AND ACKNOWLEDGES HIS NEED FOR COUNSEL.
2. What is the level of his unmanageable behavior? NONE.
3. What is the quality of the anticipated manner in which he will relate to his attorney? HE WILL LIKELY BE WILLING AND ABLE TO DISCUSS NECESSARY AND IMPORTANT MATTERS WITH HIS ATTORNEY.

Ahmad Edwards, #3915
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Page 3

4. Does he have the ability to plan a legal strategy? YES, IN COOPERATION WITH HIS ATTORNEY.

5. Does he have the ability to appraise the roles of the participants in the courtroom proceedings? YES. When asked to explain the roles of various courtroom personnel, his answers were as follows:

- Prosecuting attorney: **He is to introduce evidence for the State and to get a conviction.**
- Defense attorney: **To introduce evidence for my defense, and to help me. He objects also to anything improper.**
- Judge: **To preside over the hearing. He rules on objections. He protects my rights and the victims' rights. He also gives the sentence if I'm found guilty.**
- Will you get a fair trial? **Yes.**
- He voiced no delusional ideation concerning any courtroom personnel.

6. Does he understand the procedures of the court? YES. DURING OUR DISCUSSION, HE DEMONSTRATED AN EXCELLENT UNDERSTANDING OF COURTROOM PROCEDURES.

7. Does he have an appreciation of the charges against him? YES. HE CAN RECITE HIS EXACT CHARGES AND THEIR FELONY LEVELS, AND THE MEANING OF THE CHARGES.

8. Does he have an appreciation of the range and nature of the possible penalties he faces? YES. HE STATES ACCURATE RANGES OF POSSIBLE SENTENCES FOR EACH CHARGE IF HE IS FOUND GUILTY.

9. Does he have ability to appraise the likely outcome of the charges against him? YES.

10. Does he have the capacity to disclose to his attorney available pertinent facts surrounding the offenses? YES.

11. Does he have the capacity to challenge prosecution witnesses realistically? YES.

12. Does he have the capacity to testify relevantly? YES.

13. Does he manifest self-serving motivation or self-defeating motivation? SELF-SERVING MOTIVATION.

SUMMARY:

Ahmad (NMN) **Edwards** is a 31 year-old single black male from Marion County, who was admitted here to the Isaac Ray Treatment Center of Logansport State Hospital on **1-27-04**, after having been found to have Insufficient Comprehension to Stand Trial on **11-24-03** in the Marion Superior Court, Criminal Division Room 5, under Cause No. 49G05-9907-CF-121975. He is charged with committing the following crimes on or about **7-12-99**: Attempt Murder (Class A Felony), Battery (Class C Felony), Criminal Recklessness (Class D Felony), and Theft (Class D Felony).

He has shown excellent **progress** in the reduction/elimination of his psychotic symptoms in

the past 2 months of treatment here. His behavior has been excellent.

Ahmad Edwards, #3915
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Concerning his present **comprehension** to stand trial, my conclusions are as follows:

- He demonstrates very good comprehension of his charges and possible sentence ranges if he is found guilty as charged.
- He demonstrates very good comprehension of the legal proceedings in his criminal case.
- He is demonstrating the abilities necessary to assist his attorney in his own defense, including good communications skills, cooperative attitude, average intelligence, and good cognitive functioning.

OPINION:

Therefore, in my opinion, to a reasonable degree of medical certainty, **Ahmad Edwards has attained sufficient comprehension to stand trial.**

/s/ Robert J. Sena
Robert J. Sena, M.D.
Staff Forensic Psychiatrist
Indiana Physician License
#01055412A
Diplomate, American Board
of Psychiatry and
Neurology, 1991

Logansport State Hospital/
Issac Ray Treatment
Center

Ahmad Edwards, #3915
DOA: 1-27-04
DOB: 1-29-73

MR AHMAD EDWARDS	)	IN THE MARION
	)	SUPERIOR COURT
V.	)	ROOM NO. 5
	)	CAUSE NO.
THE STATE OF INDIANA	)	49G059907CF
	)	121975

<<stamped>> FILED SEP 13 2004 <<signature>>
CLERK OF THE MARION CIRCUIT COURT
<<written>> 13 Sep 04 GWH

"ORDERS TO THE CLERK"

P.1]
Please furnish me Mr. Ahmad Edwards a filed copy of this [five] 5 page report you might have recived;

I have sent you an stamped, self-addressed envelope so that this order my be provided.

"Thank you, as your office shall always be honored an respected."

<<written>> Copy sent 9-13-04 Deputy clerk /s/ Pam S

CONTINUED ON PAGE; 2 OF; 2

Cont - "ORDERS TO THE CLERK"

P.2]

I affirm, under the penalties for perjury, that the foregoing representations are true.

9/3/2004 /s/ Ahmad Edwards
Mr. Ahmad Edwards

File. c.c.

MR. AHMAD EDWARDS	)	IN THE MARION
VS.	)	SUPERIOR COURT OF MARION
THE STATE OF INDIANA	)	COUNTY
	)	CAUSE NO. 5 49G059907CF 121975

<<stamped>> FILED SEP 13 2004 <<signature>>
CLERK OF THE MARION CIRCUIT COURT
<<written>> 13 Sep 04 GWH

NOTICE OF CRIMINAL RULE 4.C.

Mr. Ahmad Edwards the accused must be brought to trial under subdivision C of the trial rule 4 of the criminal procedure in one year or so held be discharged. A charge against him filed July 15, 1999 a period of two years passed befor he filed a motion to dismiss criminal charges and discharge the defendant by criminal rule 4.C on May 29, 2001 now he is requesting the court to take notice of his motion to dismiss and discharge, three years later.

/s/ Ahmad Edwards
Ahmad Edwards

<<written>> Copy sent 9-13-04 deputy clerk /s/ Pam S.

Dear Clerk of the Court,

Please file this notice and send me a copy.

Thank you,

Ahmad Edwards

	)	IN THE MARION
MR. AHMAD	)	SUPERIOR COURT
EDWARDS	)	ROOM NO. 5
V.	)	CAUSE NO.
THE STATE OF	)	49G059907CF
INDIANA	)	121975

<<stamped>> FILED SEP 13 2004 <<signature>> CLERK OF THE MARION CIRCUIT COURT
<<written>> sent for hrg 17 Sep 04 @ 9:00 AM /s/ GWH
<<written>> copy sent 9-13-04 Deputy Clerk ps

PETITION FOR HEARING

P1

1. I Mr. Ahmad Edwards the defendant have administered by a clerks service to the court the Indiana rules of trial procedure trial rule 1 witch confers a right to a speedy determination.
2. Therefor I Mr. Ahmad Edwards applicant to claims an interest to : a fast and speedy trial request to be permitted to an action to correspond with that of the rules provided in criminal rule 4.C. for a hearing:

CONTINUED ON PAGE; 2 OF; 3

CONT - PETITION FOR HEARING

P2

2. witch states the defendant shall be entitled to discharge if so held to answer a criminal charge for a period more than a year.
3. I the defendant for action wish to not be withheld from order to such as the trial rule 1., and have become certain of the rules to prejudice if this

request falls the established association under the criminal rule 4.C caused conclusion.

4. The right of the petition is deemed to be the defendants and acquires jurisdiction over the court.

The defendant prays this petition will be fairly and adequately

CONTINUED ON PAGE; 3 OF; 3

CONT - PETITION FOR HEARING

P.3

Protected in interests of the courts association.

"I affirm, under the penalties for perjury, that the foregoing representations are true.

/s/ Ahmad Edwards
Ahmad Edwards

Dear Clerk of the court,

Please file this petition for hearing and send me a copy.

Thank you,

Ahmad Edwards

<<stamped>> FILED SEP 22 2004 <<signature>> /s/ Doris Ann Sadler

<<written>> noted <<initials>> 9-24-04

Dear Grant Hawkins:

For days I have remained alert for the honor to be released for the execution of right a 2001 discharge claim drew. Thank you for the moment.

Ahmad Edwards

<<written>> noted <<initials>> 9-24-04

<<written>> 99121 75 <<signature>>

Dear Honerable Judge,

Hopeless! Is there an honest person in the court, loyal to law? My court ask for fools to be freed and confindently not hear me.

Listen to this case; the foundations of my cause, the criminal rule 4. Courts territory acknowledged May 29, 2001 abandon for the young American citizen to bring a permissive intervention. Acting as the forces! To predict my future disgraced by the court to motion young Americans to gather against crime.

My courts failure humiliated introductions kindly of right reason, and hope.

Court Room 5
Criminal Division,

Ahmad Edwards
Director for

<<stamped>> FILED SEP 22 2004 <<signature>>
Doris Ann Sadler
<<written>> noted <<initials>> 9-24-04

Dear Honorable Nancy Broills

For days I have remained alert for the honor to be released for the execution of right A, 2001 discharge claim drew. Thank you for the moment.

Ahmad Edwards

AHMAD EDWARDS	)	IN THE MARION
PLAINTIFF,	)	SUPERIOR COURT
V.	)	OF MARION COUNTY
STATE OF INDIANA	)	CAUSE NO.
RESPONDENT,	)	49G059907CF12
	)	1975

<<stamped>> FILED OCT 21 2004 <<signature>> CLERK OF THE MARION CIRCUIT COURT
<<written>> Completed and sent 10-21-04 Deputy clerk Pam S.
<<written>> 21 Oct 04 <<signature>> GWH

MOTION FOR COURT TO FURNISH DOCKET SHEETS

Comes now the defendant in the above stated cause of action and respectfully requests this court to issue an order mandating the court clerk to furnish a complete copy of the docket sheets in the above stated cause to the petitioner. The petitioner pursuant to trial rule 72[A]. He is entitled to have the court open. The defendant is an inmate incarcerated in the Marion County Jail in Indiana and access to the court is only available to him through mail. The obstruction by the courts denial of a furnishment of said docket sheets effectively closes the courts for timely review of motions. Johnson v. Avery: 393 U.S. 483.485[19G]; Demallor v. Cullen: 855 F.2d.442,448 [7th cir. 1988].

Wherefore, the defendant prays this court will grant the order requiring the furnishing of the requested docket sheets as in just and proper in this case.

CONT - MOTION FOR COURT TO FURNISH DOCKET SHEETS

Respectfully Submitted,
/s/ Ahmad Edwards
PETITIONER: PRO SE

Dear Clerk

Please copy and file this motion for court to furnish docket sheets and send me a filed copy for my own records. I'v sent a self-addressed stamped envelope for this request can be honored.

/s/ Ahmad Edwards

<<stamped>> SEP 15 REC'D
<<stamped>> FILED NOV 1 2004
<<signature>>Doris Ann Sadler
<<written>> 5 NOV 04 Denied <<initials>> GWH

MR. AHMAD EDWARDS	) IN THE MARION
	) SUPERIOR
VS.	) COURT OF
THE STATE OF INDIANA	) MARION COUNTY
	) CAUSE NO.
	) 49G059907CF
	) 121975

MOTION TO DISMISS AND DISCHARGE

P.1

Comes now the defendant Mr. Ahmad Edwards with the following good and sufficient request for the dismissal and discharge of the defendant Mr. Ahmad Edwards

CONTINUED ON PAGE; 2 OF; 4

MOTION TO DISMISS AND DISCHARGE

P.2

The representations the defendant affirms under for the cause number: 49G059907CF121975 to be dismissed and discharge the defendant.

The defendant states the criminal procedure rule 4.C; is in denial of its duties to dismiss and the Constitution of the United States Article. 1 § 12 of his right is being intimidated. Mr. Ahmad Edwards has been for well over four 4 years applicable for the presumption of prejudice.

The defendant request the court to control and keep safe the rules and rights he accepts for the events and by comprehensive

CONTINUED ON PAGE; 3 OF; 4

MOTION TO DISMISS AND DISCHARGE

P.3

Injunctions purpose: for the detection, and solution of crime produced as a movement of supporters the defendant also states rule 4.C.; for courts speedy trial and that if within one 1 year the defendant motion to dismiss criminal charges and discharge is not recognizanced the life and liberty of the defendant Mr. Ahmad Edwards must be enforced by laws of the United States Contitution for the dismissal and discharge.

The defendant was not brought to trial for one 1 year and in 2001 determined to expedite the Marion Superior Court to be discharged.

CONTINUED ON PAGE; 4 OF; 4

MOTION TO DISMISS AND DISCHARGE

P.4

The defendant herein the Marion Superior Court Room Five 5 Criminal Division respectfully request the dismissal and discharge of this cause above.

"I affirm under the penalties for perjury that the foregoing representations are true."

/s/ Ahmad Edwards

Dear Clerk of the Court,
I have always honored and respected your office. Please copy this four 4 page motion and furnish me the copy filed stamped.

Thank you,

/s/ Ahmad Edwards

<<stamped>> FILED NOV 1 2004 <<signature>>
Doris Ann Sadler
<<written>> 5 Nov 04 <<initials>> GWH
<<written>> 49 59907CF121975

Dear Honorable Judge

Hopeless! Is there an honest person in the court, loyal to law? My court ask for fools to be freed and con findently not hear me.

Listen to this case; the foundations of my cause, the criminal rule 4. Courts territory acknowledged May 29, 2001 abandon for the young American citizen to bring a permissive intervention. Acting as the forces! To predict my future disgraced by the court to motion young Americans to gather against crime.

My courts failure humiliated introductions kindly of right, reason, and hope.

Court Room 5
Criminal Division,

_____
Ahmad Edwards
Director

<<stamped>> FILED NOV 1 2004 <<signature>>
Doris Ann Sadler
<<written>> 5 Nov 04 Denied <<initials>> GWH

MR. AHMAD EDWARDS, GROUPS: TURNING POINT, PUR-, POSE, BOARD OF DIRECTORS, CAP ITAL COMMITTEE	)	IN THE MARION SUPERIOR COURT CIVIL DIVISION ROOM 5 49G059907CF121975 CAUSE NO:
V.		
THE STATE OF INDIANA	)	

PETITION FOR HEARING

1. For hearing correspondence;
2. Substantialy, Article V; IV; II§3; and 1.§8.8 of the U.S. Constitution;

[CONTINUED ON PAGE, 2 OF; 3]

[CONT - PETITION FOR HEARING]

3. The groups stated above desires considerations of the court proper for legislation to intervene with the matters above limited by the U.S. Constitution.
4. Mr. Ahmad Edwards would also as an agent\director urge the court to consult, the best position to advise the groups of any, recourse that may be available established and to be action of law, certain of the rules admissions not to fail responsibilities of other officials,

counterproductive resolved in the court system therein any action that might be construed as interference.

CONTINUED ON PAGE, 3 OF; 3

[CONT - PETITION FOR HEARING]

5. Therefor I sincerely regret if this petition cannot be of more direct assistance to the group upon this courts hesitation to set it's matters involving the Congress of the United States approved acts on June 19,6 1968.

"I affirm, under the penalties for perjury, that the foregoing representations are true.

/s/ Ahmad Edwards
Mr. Ahmad Edwards
Director

Dear Clerk,

Please have this 3 page petition for hearing classified for a hearing and accorded, with a cause number; copyed and filed stamped and have a filed stamped copy mailed to me for my records.

I have provided clerk a self-addressed stamped envelope so that the filed stamped copy may be returned.

Thank you,

Mr. Ahmad Edwards

STATE OF INDIANA	) IN THE MARION
	) COUNTY SUPERIOR
COUNTY OF MARION	) COURT
STATE OF INDIANA	) SS: CRIMINAL
V.	) DIVISION, ROOM NO.
AHMAD EDWARDS	) FIVE
	) CAUSE NO.
	) 49-G05-9907-CF-121975

<<stamped>> FILED AUG 01 2005 <<signature>>>>
CLERK OF THE MARION CIRCUIT COURT
<<written>> 16 Aug 05 Dr Schuster will make himself available <<GWH>>
<<written>> 17 Aug 05 Dr. Masbaum will make himself available <<GWH>>

NOTICE OF INTENT TO INTERPOSE DEFENSE OF INSANITY

Ahmad Edwards ("Defendant"), by Dirk Cushing of the Marion County Public Defender Agency ("Counsel"), pursuant to Indiana Code 35-36-2-1, hereby notifies the Court and the State that he intends to interpose the defense of insanity in this cause.

Respectfully submitted,

/s/ Dirk A. Cushing
Dirk Cushing
Deputy Public Defender, C-1782
Attorney for the Defendant, 11533-49

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served upon the Marion County Prosecutor's Office, either by personal service or by placing a copy of the same in the Prosecutor's box of this Court, this same date of filing.

/s/ Dirk A. Cushing
Dirk Cushing
Marion County Public Defender Agency
200 East Washington Street, Suite 560
Indianapolis, Indiana 46204
(317) 327-5762

AGENCY FORM 1.16.2

AHMAD EDWARDS	)	CAUSE NO. 49G05-9907
PETITIONER,	)	CF-121975
VS.	)	IN THE MARION
THE INDIANA	)	SUPERIOR COURT
DEPARTMENT OF	)	CRIMINAL DIVISION,
MENTAL HEALTH	)	ROOM 5
LOGANSPORT	)	THE HONORABLE
	)	GRANT
STATE HOSPITAL	)	HAWKINS JUDGE
ISAAC RAY	)	
RESPONDENT	)	

<<stamped>> FILED AUG 30 2005 <<signature>>
CLERK OF THE MARION CIRCUIT COURT

Comes now the defendant to petition the end of the made violations therein the Logansport State Hospital-Isaac Ray

1. The petitioner is restless and troubled in the areas of the following:

   A. To practice his own religion;

   B. To consult with a doctor

   C. Be free from discrimination

   1. Of his ancestry handicap

   2. Of sex maximums purpose

   3. Of creed of case execution

   D. Be at consent education.

The respondent has no way to give the commencement of these actions; service or a process above the petitioner is pleading

2. Petitioner actions: 42 USCA§10841
3. The petitioner has filed a complaint with the United States district court for the southern district of Indiana and/or at the "allegation jurisdiction"
4. The petitioner was commitment order on Nov 24 2003 under IC 16-14-9.1. and returned 7 months afther his admission date to a psychiatric institution the violation of the court order.

The petitioner hereby files the written petition to have this matter and others taken into evaluation open court and if the court is found to be disinterested - find the respondent a recommendation the petitioner object to

I swear under penality of perjury 1.C.35-44-2-1 the foregoing representations are true.

/s/ Ahmad Edwards
Ahmad Edwards

UNITED STATE)
DISTRICT COURT)
SOUTHERN)
DISTRICT OF NEW)
NEW YORK)
AMBERGRESS)
ZENAGENCIES)
PLAINTIFFS,)
VS.)
THE UNITED STATES)
OF AMERICA)
DEFENDANT)

B. DEFENDANT:

STATEMENT OF JURISDICTION AND PREVIOUS LAWSUITS

A. JURISDICTION:

B. PREVIOUS LAWSUITS:

1:04-CV-1508-LJM-WTL

1:04-CV-1732-DFH-VSS

CAUSE OF ACTION:

"JURY TRIAL DEMANDED"

AGENCY FORM[5]148 C

CAUSE OF ACTION:

GROUND : U.S. Const. Art. 1. Secretary cooperation considered.

GROUND : Haggard vs. State, app 2002.771 N.E. 608 reciprocal

GROUND : Anirim vs. State, app.2001.745 N.E.2d 246. Punishment

STATEMENT OF FACT:

Defendants damage is mitigator ballistics shave Donald Rumsfeld instrument discount rates at the ~~Neo Geo~~ seriousness of European Unions vaid at war free to utilize compelled lex to find pleading argument of responsibility absence of a day within a full year of corroboration the plaintiff class acceptance of a pragmatism result deviate in conduct as possible/properly record.

Relief

We the plaintiffs ~~is~~ in the afforemention cause do affirm that we have read all of the statements contained in the complaint and that we beleve them to be to the best of personal knowledge true and correct.

/s/ Ahmad Edwards
Ahmad Edwards

<<stamped>> FILED AUG 30 2005 <<signature>>
CLERK OF THE MARION CIRCUIT COURT

THE GROUP [FATPXTRL]) AHMAD EDWARDS IN HIS OFFICAL CAPACITY AS DIRECTOR OF THE GROUP – VS. LOGANSPORT STATE HOSPITAL RESPONDANT,	)	AGENCY P/T [4
PETITION	)	PETITIONER IN THE MARION SUPERIOR COURT CRIMINAL DIVISION, ROOM 5 CAUSE NO. 4946G05-990 7CF-121975

1. Harassment for 6 [six] months evented therein the defendants location and is responsible for an act was adequate to damage the petitiones
2. The petitioner was attacked and became victim with the circumstances inferred from a 33-year old man found as mentally ill/dangerous to his-self and recommended from service provider from a record to be at all times measured from others for the security fact to not be at injury.
3. The group [FATPXTRL] filed act in form of request as responce to distribution respondant could not take part in dispositioning loss to group-. [File Date Sep 25, 02]
4. Defendant could not violate contracts a petitions groups at all instances was merged. Then the set defendant achieved to become stronger at the

trial courts post trial rules yet could not offer habilitation or attbute to the courts request for petitioners relief thereof its veil of trust

Petitioner request no such order be to defendant method defendants corporate defendant is obviously frivolous and or absurd. Vexation was caused on the petitioner after defendants therapeutic treatment.

P.L.2-1992,Sec.21.

"I affirm, under the penalties for perjury that the foregoing representations are true.

/s/ Ahmad Edwards
Ahmad Edwards
Petitioner

United States
District Court
Southern Dis-
trict of

Ahmad Edwards
in his official
capacity

V.S.

Daniel Lest
in her offical
capacity as

The/communication and depends analyzer hypnoanalysis discovered ~~are~~ narcosynthesis then ~~un(o~~ theories thust penetrated awake matter conception prenatal experience terror full of holes rapes

99121975

<<stamped>> FILED SEP 12 2005 <<signature>>
CLERK OF THE MARION CIRCUIT COURT
<<written>> 12 Sep 05 <<GWH>>

"Like the guide book says, it can be done!....I'm doing Europe on $5 a day!....The other $45 is being spent by my wife!"

<<drawing>>

Dear offical,

Lawyers take more time to build up modernization and have your needs deliberate, collaborated and put first on the list of ought to do than judges. I suppose that's the reason the law suggests looming the dominance of the courts first love the judge given any other reason referred revelations potentially, I would not feel like this letters hearing could cite flexible system policy that could amount one of your great letters so my charges are tightly linking vehicles to talk about the doing fine.

The court room 5 justice "the hon" he united trial month before last...got split verdict or more like a repugnant verdict. My lawyer being drunk on duty saying I ought to be punished just before trial showed me a new age of human wisdom lost and below it all I can't stop looking to the man above the law "God" for a new lawyer judge and court room...Is there a way that I'm entitled to those? I than as a citizen, "O for-get-it-no matter how much I pray, I wont ever get any of thoes things!

Ok I'v layed down my routine "old girl" It's time to lift your spirt...

Things said in the dark;

"I can't wait to find out if I'm going to be a boy or a girl!"

"Now will you let me call a electrician."

"Let me read your letter."

Thanks to talk
Ahmad Edwards

STATE OF INDIANA	)	IN THE MARION
COUNTY OF MARION	)	SUPERI-
STATE OF INDIANA	)	OR COURT CRIMINAL
V.	)	DIVISION,ROOM 5
AHMAD EDWARDS	)	CAUSE NO. 49G059907-
	)	CF121975

<<stamped>> FILED OCT 05 2005 <<signature>>

"NOTICE OF REQUEST MADE"

Oct. 3 ,2005

Dear, clerk file this and send copy

The counsel Kevin McShane logical requested a typed copy of all testimony given orally at this cause 494G05-9907CF121975 or hade this fact spoken open court of this attorney have anything or seen a motion from state of adopted work from this or that cause here above.

F.C.C.

"I served the above and following commission by placing properly in a envelope of postage depositing the same in the hands of a U.S. Mail person at the Marion County Jail authorized as notary.

/s/ Ahmad Edwards
Ahmad Edwards

Subscribed and sworn to before me a notary public in and for Indianapolis Indiana County of Marion, this 3rd a day of Oct. 2005.

/s/ Brian Rodgers
<<written>> (Brian Rodgers)
Notary Public<<written>> 11-5-2006 Marion, IN

Date: 9/27/2005 5 : USER

Time: 9:23:16 AM
USER

STAT OF INDIANA	)	IN THE MARION
COUNTY OF MARION	)	SUPERIOR CRIMINAL
~~STATE OF~~	)	DIVISION,ROOM 5
STATE OF INDIANA	)	CAUSE NO. 49G059-
V.	)	907CF121975
AHMAD EDWARDS	)	

<<stamped>> FILED OCT 27 2005 <<signature>>
<<written>> 31 Oct 05 <<GWH>>

Oct/14 /05 Clerfk

File and send copy |

PETITION FOR HEARING

The rate of the attorney Kevin McShane rule not to avoid the cost of references for the accused to have evidence against the alleged victim and offers of the state at trial rule: now has a charactered look of the most piloted extrinsic act that has ever outweighed the defence to time unfair at admonition as to not have seen the defendant in private for 60 days governed to do so by the court standard of 90 days of continuances or rest in sound discretion of trial relevancy, Rule 53.5.

The defendant claimed an error would be on the grounds that if an attorney could not rise his staff to analyze the law before him in private for more than 90 days what attorney could relate to at open trial or when instructing a jury for defence to find and jurisdiction beyond reasonable doubt : would be failed or disproved of by the defendant/petitioner Mr.Ahmad Edwards and would cause error absent attorneys [Kevin McShane] might to vist the petitioner in private for ~~more that~~ 6 hours or 3 hours abuse is: granting this petition for defence

continuances and to deny a hearing for continuance rest in the abuse of discretion that will be found as violation of the U.S. Const. Amend. 6 if a hearing is not set before 6 weeks vacated against the expander date of courts protecting right acts date of : 12/19/05.

/s/ Ahmad Edwards
Ahmad Edwards
Petitioner

F.CC

Served to me by postage of U.S. Mail subscribed and sworn to before me a notary public in and for Indiana.
10- -05.

/s/ Brian Rodgers
<< written>> 11-5-2006
Notary Public
<<written>> Brian Rodgers
Marion, IN

MARION COUNTY JAIL INMATE MESSAGE CARD

DATE:CELL:4-TGAL#:

INMATE'S NAME:

MESSAGE TO: (NAME) 10/27/05

MESSAGE (PLEASE BE SPECIFIC)

Dear: clerk I have not been able to find you name. For if I hade it it would be in my prayers <<drawing>>. I've recived your help more times than I can re-call thanks

Ahmad

JA/LS

EPITHUMIA, EROS, PHILIA,
STORGE AGAPE
<<stamped>> FILED OCT 27 2005 <<signature>>

AHMAD	)	
EDWARDS	)	IN THE MARION
PLAINTIFF,	)	SUPERIOR COURT
V.	)	CRIMINAL DIVISION
STATE OF INDIANA	)	ROOM 5.
COUNTY OF MARION	)	THE HONORABLE
STATE OF INDIANA	)	GRANTW.~~N~~
RESPONDENT	)	HAWKINS
	)	AND THE HONOR-
	)	ABLE NANCY
	)	BROYLES
	)	AND THE HONOR-
	)	ABLE GARY
	)	MILLER
	)	CAUSE NO.49G05
	)	9907CF121975

<<stamped>> FILED DEC 09 2005 <<signature>>
<<written>> 99121975
<<written>> 13 Dec 05 <<GWH>>

Continued ~~on~~ page,
5, of 5. request
pro se

This request is proper above and should be ruled as such.

A copy of the forgoing request of 5, pages befor me placed in a envelope with a self-addressed stamp pre postage then placed in the hands of a U.S. post person plaintiff appeared and signed the foregoing request on this th day of Dec, 2005.

Notary Public/s/ Brian Rodgers <<written>>
(Brian Rodgers)
<<written>> Comm: 11-5-2006 Marion, IN

/s/ Ahmad Edwards
Ahmad Edwards
Plaintiff pro se

"I affirm, under the penalties of perjury, that the foregoing representations are true."

Agency file
Page: 05

U.S. Government

Initiative: Regulatory

AHMAD EDWARDS	) IN THE MARION
PLAINTIFF,	) SUPERIOR COURT
V.	) CRIMINAL DIVISION
STATE OF INDIANA	) ROOM.5
COUNTY OF MARION	) THE HONORABLE
STATE OF INDIANA	) GRANT W.
RESPONDENT.	) HAWKINS
	) AND THE HONOR-
	) ABLE NANCY
	) BROYLES
	) AND THE HONOR-
	) ABLE GARY
	) MILLER
	) CAUSE NO. 49G05
	) 9907CF121975

Continued as page,
1 of, 5 .request
pro se

To the clerk of the court, ~~hr~~ defendant hereby notifies the parties of the court room 5, that the defendant to the cause above and on the right that he trust that your office will have the following forms certified, filed copy stamped and prepared for the judge completing this cause

Enabling the plaintiff to come pro se is the followg extents immersed of the laws power and energy and the U.S.Const.Amend.6. to the people;

Performing after the U.S. Const.Amend.6. ~~the~~ the plaintiff, hereby in emergency exercises rations of the U.S.Const.Art.1. for our America.

/s/ Ahmad Edwards
Ahmad Edwards

Plaintiff pro se

"I affirm, under the penalties of perjury, that the foregoing representations are true."

Agency file U.S. Government
Page:01 Initiative;regulatory

AHMAD EDWARDS	) IN THE MARION
PLAINTIFF,	) SUPERIOR COURT
V.	) CRIMINAL DIVISION
STATE OF INDIANA	) ROOM.5.
COUNTY OF MARION	) THE HONORABLE
STATE OF INDIANA	) GRANT W.
RESPONDENT.	) HAWKINS
	) AND THE HONOR-
	) ABLE NANCY
	) BROYLES
	) AND THE HONOR-
	) ABLE GARY
	) MILLER
	) CAUSE NO. 49G05
	) 9907CF121975

Continued ~~on~~ page,
2, of 5 .request
pro se

Self-representation and hybrid representation.

The U.S.Const.Amend.6.exercised as right of plaintiff.

Ineffective attorney ortril assistance be struck.

/s/ Ahmad Edwards
Ahmad Edwards
Plaintiff pro se

"I affirm, under the penalties of perjury, that the foregoing representations are true."

Agency file U.S. Government
Page:02 Initiative;regulatory

AHMAD EDWARDS	)	
PLAINTIFF,	)	IN THE MARION
V.	)	SUPERIOR COURT
STATE OF INDIANA	)	CRIMINAL DIVISION
COUNTY OF MARION	)	ROOM.5
STATE OF INDIANA	)	THE HONORABLE
RESPONDENT.	)	GRANT W.
	)	HAWKINS
	)	AND THE HONOR-
	)	ABLE NANCY
	)	BROYLES
	)	AND THE HONOR-
	)	ABLE GARY
	)	MILLER
	)	CAUSE NO. 49G05
	)	9907CF121975

Continued on page;
3, of 5 .request
pro se

Plaintiff not be required to demonstrate competence for self-representation: Godinez v. Moran, 509 U.S. 389, 125 L.Ed.2D 321, 113 S.Ct.2080 [1993]

Request seen unequivocally asserted as 10 days before trial.

Hunt v. State, 459 N.E.2D 730 [Ind. 1984].

/s/ Ahmad Edwards
Ahmad Edwards
Plaintiff pro se

"I affirm, under the penalties of perjury, that the foregoing representations are true."

Agency file U.S. Government
Page;63 Initiative;regulatory

AHMAD EDWARDS	)	
PLAINTIFF,	)	IN THE MARION
V.	)	SUPERIOR COURT
STATE OF INDIANA	)	CRIMINAL DIVISION
COUNTY OF MARION	)	ROOM.5
STATE OF INDIANA	)	THE HONORABLE
RESPONDENT	)	GRANT W.
	)	HAWKINS
	)	AND THE HONOR-
	)	ABLE NANCY
	)	BROYLES
	)	AND THE HONOR-
	)	ABLE GARY
	)	MILLER
	)	CAUSE NO. 49G05
	)	9907CF121975 .

Continued on page;
4, of 5. request
pro se

A required delay of proceedings for case direct conclusion.

Interference with this U.S.Const. law is:obstruction of justice.

Plaintiff pro set
Ahmad Edwards
/s/ Ahmad Edwards

"I affirm, under the penalties of perjury that the foregoing representations are true."

Agency file U.S. Government
Page;64 Initiative;regulatory

<<stamped>> FILED DEC 12 2005 <<signature>>
CLERK OF THE MARION CIRCUIT COURT
<<written>> 14 Dec 05 <<GWH>>

AHMAD EDWARDS	)	IN THE SUPER-
AMBERGRESS &	)	IOR COURT OF
ZENAGENCIES	)	MARION COU-
PETITIONERS,	)	NTY CRIMINAL
V.	)	DIVISION ROOM.
INDIANA	)	1.
PUBLIC SAFETY &	)	CAUSE NO. _____
	)	CLERK OF COURT
CRIMINAL JUSTICE	)	PLEASE FILE AND
COPY		
RESPONDENT. _____	)	'PEITTION'

Affidavit to of indigency that petitioner Mr. Ahmad Edwards is incarcerated at the Marion County Jail and indigent entitled to I.C. 34-1-1-3.

Now comes the petitioner wherein this petition to state:

1. The agency above presented at trial controls a childrens program voting the respondents exports to place program amoung public.
2. A hearing should be held in room 200 of city county blog. Therein Marion County

Petitioner as agency Ambergress & Zenagencies by director Ahmad Edwards a hearing for industrial customers prejudiced of this record of agency program strategy to fight crime, world wide.

/s/ Ahmad Edwards
Ahmad Edwards
[Director]

Petitioner for the group
of class actions

To postman before me, the undersigned notary public, in and for said state of Indiana County of Marion, this th day of December, 2005 petitioner appeared and signed the foregoing petition

Notary public /s/ Brian Rodgers <<written>>
(Brian Rodgers)
<<written>> Comm : 11-5-2006 Marion, IN

Send copy to plaintiff/petitioner at
40.S.Alabama St. Indianapolis, IN 46204

Agency file U.S. Government
Page;60 Initiative:regulatory

<<stamped>> FILED DEC 13 2005 <<signature>>

ORDERS TO CLERK : RETURN THIS ORDER COPIED.

1. Please filestamp the foregoing petition for pro se actions and send a copy back to me for my files.

Thank you
and the American
citizens thank you

file.c.c.

/s/ Ahmad Edwards
Ahmad Edwards

6:38.A.M.
Dec.9.05.

Re: Acknowledge the U.S.Amend.6. as right!!

Dear clerk:

Liberally this action will become an offical act of government that will fundamental a philosophy about Indiana employess, regarding the perfection that is ideal amoung the United States. This expression of pro se is becomed, principle herein the trial court room, 5 and the conscious, superconscious of such philosophy and it's refers.

/s/ Ahmad Edwards
Ahmad Edwards

In the Supreme Court of_____

_____)

The_____) Case No._____

_____)

_____) At : Agent.6.16.2.11

_____) 33.34.35.32.31.13

_____) Agency Form/gun

_____)

Petitioner [s]/)

relator/plain-)

tiff[s][class])

corporation)

party/defendant.)

V.)

THE_____)

_____)

_____)

_____)

RESPONDENT[S])

EMERGENCY WRIT OF MANDAMUS

<<stamped>> FILED DEC 13 2005 <<signature>>

STATE OF INDIANA	)	IN THE SUPERIOR
COUNTY OF MARION	)	COURT OF MARION
STATE OF INDIANA	)	COUNTY
RESPONDENT,	)	DIVISION 5.
V.	)	"PETITION"
AHMAD EDWARDS	)	FOR PRO SE CAUSE NO.
PETITIONER.	)	ACTIONS. 99121975

"This cause comes to court for a hearing on petitioners U.S.Const.Amend.6. right to pro-se actions and he is alleging the below:
Petitioner waivers right to attorney.

Petitioner Ahmad Edwards has sufficient comprehension to understand trial.

Petitioner of an agency and a action to have established, eliminating cause-public office.

Hearing compliance not done issued malice with intent with knowledge of this petition.

Petitioner placed in the hand of U.S.postperson.

"I affirm, under the penalties of perjury, that the foregoing, representations are true."

/s/ Ahmad Edwards
Ahmad Edwards
Petitioner #494657-4-T
40.S.Alabama.St.Indianapolis, IN 46204

file.c.c.

Before me, the undersigned notary public, in and for said state of Indiana County of Marion, this 9th day of December, 2005 petitioner appeared and signed the foregoing petition.

/s/ Brian Rodgers <<written>> (Brian Rodgers)
Notary Public
Comm:11-5-2006/ Marion, IN

CONTINUED EMERGENCY WRIT OF MANDAMUS

At:agent.5.15.2.11.20.
33.34.35.32.31.13
Agency Form/gun.

<<stamped>> FILED DEC 13 2005 <<signature>>

STATE OF INDIANA	)	| IN THE SUPERIOR
COUNTY OF MARION	)	| COURT OF MARION
STATE OF INDIANA	)	| COUNTY
V.	)	"PETITION" |
AHMAD EDWARDS	)	FOR PRO SE DIVISION
5.		
	)	ACTIONS. |
	)	| CAUSE NO.
	)	| 99121975

This cause comes to court for a hearing on petitioners U.S.Const.Amend.6. right to pro-se actions and he is alleging the below:

Petitioner waivers right to attorney.

Petitioner Ahmad Edwards has sufficient comprehension to understand trial.

Petitioner of an agency and a action to have established, eliminating cause-public office.

Hearing compliance not done issued malice with intent with knowledge of this petition.

Petitioner placed in the hand of U.S.post person.

"I affirm, under the penalties of perjury, that the foregoing, representations are true.

/s/ Ahmad Edwards
Ahmad Edwards
Petitioner #494657-4-T

40.S.Alabama.St.Indianapolis, IN 46204
file.c.c.

Before me, the undersigned notary public, in and for said state of Indiana County of Marion, this 9th day

of December, 2005 petitioner appeared and signed the foregoing petition.

/s/ Brian Rodgers <<written>> (Brian Rodgers)
Notary Public
Comm:11-5-2006/ Marion, IN

CONTINUED EMERGENCY WRIT OF MANDAMUS

At:agent.5.15.2.11.20.
33.34.35.32.31.13
Agency Form/gun.

<<stamped>> FILED DEC 19 2005 << signature>>
CLERK OF THE MARION CIRCUIT COURT
6:30 A.M.
12-15-05

Judge, Hawkins

I want to expend the courts power for training for this enormously wide defence I'v to exercise also the U.S.Const. Amend 5 that as it becomes more advanced parts directly to structure the 1st Amend.

Try to do your best old man to isolate the young boy in me at this. This defence helps me face my lodge for our 35th degree we call it the passing of the hands to the thumb. And it is very important to me to work again for my family lodge

You looked good doing it your-self when the state starts offsetting the court and you show them to keep the rule and thereby the record their heads-up.

And when you are before the new examples of law I might show you at pro se rember what was once said by the great Alexander Hamilton, in the sound Federalist Papers at the point when the body of trials became cold and thereof was only therein form –

"The complete independence of the courts of justice is peculiarly essential to a limited constitution.

– Alexander Hamilton,"
Federalist Papers

Thank you for
your pursued
degrees affects,
The Defendant
Ahmad Edwards

<<stamped>> FILED DEC 19 2005 << signature>>

	)	IN THE MARION
	)	SUPERIOR COURT
AHMAD EDWARDS	)	CRIMINAL DIVISION,
	)	ROOM.5
V.	)	CAUSE NO. 49G05
STATE OF INDIANA	)	9907CF121975
COUNTY OF MARION	)	
STATE OF INDIANA	)	ONE OF TWO
	)	PAGES FORM:S.S.

WORKING

PETITION OF SETTLEMENT

Comes petitioner Ahmad Edwards the defendant in hopes that this court completes the order/writ to dismiss misjoinder of this causes indictment counts, I and II there seemed special risen duplicity thereof allegation. Therein misjoined. on, 12-12-05

The petitioner, signed, placed, in U.S. mail

Public notary /s/ Brian Rogers
<written> Brian Rogers Comm: 11-5-06

1. Orders to the clerk the above petition and below motion to dismiss misjoinder have but one other hand written copy you now have the original please have them verified by your office and recored by the offical file mark copied five times sending a copy to me at the address below and presenting a copy to the judge for decision and/or further instructions.

   Your hard work and history of your office is the chemistry, needed to have everything take great dynamic culture for young American citizens this year and years, to come. Consider your office the

test for our goals dimension, and Americas traditional court preparations.

"I the petitioner have also enclosed an self-addressed stamp envelope for your offical re-sending. And magnified identity amoung the United States Americas post offices."

The motion: "In the United States of America the motion to dismiss misjoinder" should have arrived hereon the next page of this "working petition of settlement."

4:00.A.M.
AGENT.8
33.10.

/s/ Ahmad Edwards
Ahmad Edwards
Defendant

Director of group class action

40.S.Alabama.St.Indianapolis,IN.46204

AHMAD EDWARDS	)	IN THE MARION
	)	SUPERIOR COURT
v.	)	CRIMINAL DIVISION
	)	ROOM.5.
STATE OF INDIANA	)	
COUNTY OF MARION	)	CAUSE NO.
STATE OF INDIANA	)	49G059907CF12-
	)	1975

ORDER

Defendand having filed its motion in the United States of America the motion to dismiss misjoinder in the following words and figures, to wit :"duplicity of indictment."

And the court having read and carefully considered same, now finds that said motion be granted.

It is therefore ordered, adjudged and decreed that the indictment of this cause above be dismissed.

Judge of the
Marion Superior Court
Criminal Division, Room.5

file.c.c.

copies to:
Mark Hollingworth, Deputy Prosecuter

On 12-12-05
The defendant, signed, placed in U.S. mail
Public notary/s/ Brian Rodgers <<written>>
COMM:11-5-0
<<written>> Brian Rodgers Marion, IN

6:35 A.M

Agent.20

"I affirm under the penalties for perjury that the foregoing is true"

/s/ Ahmad Edwards

Ahmad Edwards
Defendant

Director of group class action

40.S.Alabama.St.Indianapolis,IN.46204

3:07 A.M.

Agent.10.

33

AHMAD EDWARDS	)	IN THE MARION
V.	)	) SUPERIOR COURT
STATE OF INDIANA	)	) CRIMINAL DIVISION
COUNTY OF MARION	)	ROOM 5
STATE OF INDIANA	)	CAUSE NO.49G05
	)	9907CF121975

In the United States of America

the motion to dismiss misjoinder

The movant, signed, placed in U.S. mail, on, 12-12-05

Public Notary /s/ Brian Rodgers /written/ Brian Rodgers Comm: 11-5-06

Comes the defence, to dismiss, by I.C. 35-34-1-4[2] state:

1. A prosecution is barred if there was a former prosecution of the defendant based on the same facts and for commission of the same facts and for commission of the same offense if the defendant on objection does not waive this right;

   I.C.35-41-4-3
   Chapter4.Standard of proof and bars to prosecution when prosection barred for same offense.

2. Several acts relate to the same transaction, and together constitute but one offence, they may be charged in the same count, but not otherwise.

204,Ind.59,62-63,
1813 N.E. 33, 34
[1932]
Glaser v. State.
241 Ind. 1,4-7.108
N.E.2d 199, 201-202
[1900] Smith v. State.

Two of two page
form:S.S.

Wherefore, the defence moves this court to dismiss charges of this cause.

"I affirm under the penalties for perjury, that the foregoing is true

/s/ Ahmad Edwards
Ahmad Edwards
Defendant

Director of group class action

40.S.Alabama.St.Indianapolis,IN.46204

v.
State and local
Administration
Law enforcement
Criminal Intelligence
Information in Indiana
Respondents.

<<stamped>> FILED DEC 22 2005
<<signature>>Doris Ann Sadler

AHMAD EDWARDS) /s/ AHMAD EDWARDS
v) AHMAD EDWARDS
STATE OF INDIANA)

Re: Cause, No. 49G059907CFI2I970

Enclosed envelope,

Orders to Clerk:

File stamp the defendant Ahmad Edwards Motion.s

[1] Motion. Joinder Duplity.

Agency Copy

File c.c.
Movant, signed placed, in U.S. Mail on 12-21-05

Public /s/ Brian Rodgers
Brian Rodgers

4:20. A.M. KEY:	)	IN THE MARION
405 ALABAMA	)	SUPERIOR COURT
INDIANAPOLIS, IN	)	CRIMINAL DIVISION
46204 # 4946574-T	)	
AHMAD EDWARDS	)	
v.	)	
STATE OF INDIANA	)	CAUSE NO.
	)	49G059907CF121975

Agency

Form /s/ Ahmad Edwards

Defendant Ahmad Edwards motion to dismiss Joinder duplicity. Defendant moves the ground of this court to dismiss this cause orders:

Clerk please file and send a copy to the key above [Defendant]

The charge count one demonstrated facts that supported conviction of count three of cause as I.C.35-41-5-1 and I.C.35-42-2-2/attempt murder and criminal recklessness. I.C. 35-41-5-1; joined to double jeopardy and not recited of other powers warrants this count one at cause be dismissed.

Defendant prays Psalm 49,3; understanding this cause dismissed wherefore, so shall it be done.

Defendant affirms under perjury

Judgment

The court, having this day made it's entry,

It is now adjuded that this cause of action is dismissed without prejudice.

Date: _____

Sandler, Clerk

Marion Circuit Court

Movant, signed, placed, in U.S. mail, 12-21-05

Public Notary /s/ Brian Rodgers (Brian Rodgers)

Comm: 11-5-2006

Superior Court Judge

<<stamped>> FILED DEC 22 2005 <<signature>>
Doris Ann Sadler

KEY: 405 ALABAMA	)	IN THE MARION
Indianapolis, IN	)	SUPERIOR COURT
46204 #494557 4-T	)	CRIMINAL DIVISION
AHMAD EDWARDS	)	
v.		
STATE OF INDIANA	)	CAUSE NO.
	)	49G059907CF121975

Agency

Form /s/ Ahmad Edwards

Defendant Ahmad Edwards motion to dismiss.

Defendant moves the grounds of this court to dismiss this cause.

File c.c. Orders:

Clerk please file and send a copy to the key above [defendant].

Evade ruling-amend trial cannot file: Davenport v. State. 1228-30[IND 1997.

Defendant prays Psalm, 2.2 set this cause dismissed wherefore, so shall it be done.

Defendant affirms under perjury

Judgment

The court, having this day made its entry

It is now adjuded that this cause of action is dismissed without prejudice.

Date: _____

Sandler, Clerk

Marion Circuit Court

Movant, signed, placed, in U.S. mail, 12-20-05

Public Notary /s/ Brian Rodgers (Brian Rodgers)

11-5-2006

Marion, IN

KEY: 405 ALABAMA) IN THE MARION
ST. INDIANAPOLIS,) SUPERIOR COURT
IN 46204.) CRIMINAL DIVISION
AHMAD EDWARDS) CAUSE NO. 49G05
v) 9907CF121975
STATE OF INDIANA)

Agency

Form /s/ Ahmad Edwards

Defendant Ahmad Edwards motion to dismiss: true bill defendant moves the grounds of this court to dismiss this cause:

If any notation of grand avoids a bill immunity proceeding at criminal information true-bill grounds

Defendant prays Psalm, 15.5, for innocent of court property to be dismissed wherefore, so shall it be done.

"Defendant affirms under perjury,

Judgment

The court, having this day made its entry,

It is now adjuded that this cause of action is dismissed without prejudice.

Date: _____

Sandler, Clerk

Marion Circuit Court

Movant, signed, placed, in U.S. mail, 12-14-05

Public Notary /s/ Brian Rodgers (Brian Rodgers)
Comm: 11-5-06

Superior Court Judge

AHMAD EDWARDS	)	IN THE MARION
v.	)	SUPERIOR COURT
STATE OF INDIANA	)	CRIMINAL DIVISION
COUNTY OF MARION	)	ROOM 5
STATE OF INDIANA	)	CAUSE NO. 49G05
	)	9907CF121975

In the United States of America the motion to dismiss insufficiency

The Movant, signed, placed, in U.S. Mail, on, 12-19-05

Public Notary /s/ Brian Rodgers (Brian Rodgers)
Comm: 11-5-2006

Comes the defence, to dismiss, by I.C.35-41-4-3 State:

> Any challenge to the sufficiency of an information must be made by motion to dismiss prior to arraignment or any error in that regard is waived.

534 N.E.2D 229, 232 [Ind.1989]
Stwaliey v. State

637N.E.2D 1369,
1374 [IND. APP. 4th
Dist. 1994
Wine v. State

602 N.E. 2D 144, 147
[IND. APP. 5th
Dist. 1992
Marshall v. State

689 N.E2d 756 785
[IND. APP.1997
Kirts v. State.

Wherefore, the defence moves this court to dismiss charges of this cause

I affirm under the penalties for perjury that the foregoing is true

/s/ Ahmad Edwards"

Ahmad Edwards/Defendant
Director of group class action
40. 5. Alabama. St.
Indianapolis, IN. 46204

AHMAD EDWARDS	)	IN THE MARION
v.	)	SUPERIOR COURT
STATE OF INDIANA	)	CRIMINAL DIVISION
COUNTY OF MARION	)	ROOM. 5.
STATE OF INDIANA	)	CAUSE NO. 49G05
	)	9907CF121975CF
	)	121975

ORDER

Defendant having filed it's motion in the United States of Ame ca the motion to dismiss in the following words and figures, to-wit

And the court having read and carefully considered same, now finds that said motion be granted.

It is therefore ordered and decreed that the indictment of this cause above be dismissed,

Judge of the
Marion Superior Court
Criminal Division Room 5

File c.c.
Copies to
Mark Hollingworth, Deputy Prosecuter.

On 12-19-05

The defendant, signed, paced in U.S. Mail.

Public Notary /s/ Brian Rodgers
Comm: 11-5-2006 Brian Rodgers

Marion, IN

"I affirm under the penalties for perjury, that the foregoing is true

/s/ Ahmad Edwards"

Ahmad Edwards/Defendant
Director of Group Class
Action
40. S. Alabama. St.
Indianapolis, IN 46204

<<stamped>> FILED DEC 28 2005 <<signature>>
Doris Ann Sadler

AHMAD EDWARDS	)	IN THE MARION
PLAINTIFF,	)	SUPERIOR COURT
v.	)	CRIMINAL DIVISION,
STATE OF INDIANA	)	ROOM 5
COUNTY OF MARION	)	CAUSE NO.
STATE OF INDIANA	)	49G059907CF121-975
RESPONDENT.	)	

Page 1; of; 4

Orders to the Clerk:

File the below 4 ~~5~~ page petition titled U.S. Const. amend. 6.5 Petition to practice pro-se. Present a copy to the judge and return a filed stamped marked copy to the petitioners office addressed below.

U.S. Const. Amend. 6.5. Petition to Practice Pro-se

On 12-21-05 Movant, signed, placed, in U.S. Mail this petition of four [4] pages

Public Notary /s/ Brian Rodgers
Comm: 11-5-2006 Brian Rodgers

We hereby affirm under the penalties for perjury that the foregoing statements are true and correct.

/s/ Ahmad Edwards"
Ahmad Edwards
Defendant, Pro-se
Ahmad Edwards gallery:

494657 Cell: 4-T
Leading publisher of
ethnically diverse director of
religious faith base groups
40. S. Alabama. St.
Indianapolis, IN, 46204

Page 2; of 4;

U.S. Const. Amend. 6.5
Petition to Practice Pro-se

1. Petitioner has requested pro-se actions, by choice of a popular vote of class members.
2. Petitioner has debated forthright, in fiery only one task, of the goal driven work movements with over, 33 strokes, communications needed for coordinating trial, as petitioners defence is not seen eye to eye particularly by equaled attorney not prominent to international law sustenance to this cause.
3. Petitioner is the Founder of a faith-based group and director of 60 multimillion-dollar multistate class actions.
4. Petitioner a self-taught scholar, of criminal, federal, civil, international, constitutional, family, entertainment, operation, memorandum and landlord law measuring, 6 years
5. Petitioners opening legislation bill 72-26 in to a defence at multistate class action, 1968 orders local congress public law 90-351 act of omnibus crime control safe streets

6. Petitioner moves the court within motion for its community representation to have established a board for legal information in the distributors/brokers sections world wide

"We hereby affirm under the penalties for perjury that the foregoing statements are true and correct.

/s/ Ahmad Edwards"

Defendant, Pro-se
Ahmad Edwards
Leading publisher of
ethnically diverse art,
director of religious faith
base groups
40. S. Alabama. St.
Indianapolis, IN, 46204
Page; 3 of; 4

U.S. Const. Amend. 6.5
Petition to Practice Pro-se

8. Tained and as pleadings for pro-se fact;

A. Pretrial release proceedings

B. Preliminary hearings

C. Formal and informal discovery

D. Decisions to file pretrial motions

E. The contents of negotiations

F. Entry of pleas before the court

G. Voir dire and jury selection

H. Confronting the prosecutions

I. Closing Arguments

J. Obligations of confronting prosecutions cause

K. Obligations of Sentencing sentencing options, consequences and procedures

L. Official presentence report

M. Defence memorandum

N. Motions for new trials

O. Bail pending appeals

Wherefore petitioner duress pro-se acts

"We hereby affirm under the penalties for perjury that the foregoing statements are true and correct.

/s/ Ahmad Edwards "

Defendant, Pro-se
Ahmad Edwards gallery:
494657 Cell: 4-T
Leading publisher of
ethnically diverse art
director of religious faith
base groups

U.S. Const. Amend. 6.5
Petition to Practice Pro-se

7. Petitioner entrance of court pressures released stay relations arming petitioner/president of the group ambergress & zen agencies to become of income ~~needs noth~~ needs not having unusual stress stating intention of company matters at a model penal codes test, as editor at large director managing artist and executive publisher inference duty, or being required to prepay fees, costs or give security Therefor, I petitioner states for class

groups and unable to pay costs that poverty is apon civil coexistence of defence one and believed of trial preparation is petitioner entitled to redress and that the issues desired to present on defence one are not involved or discussed when together with attorney Kevin Mc Shane at: 235 N. Deleware In; Indianapolls, Indiana -46204 Fax 317-221-0900 and he at the below acts is altering real used genuine documents and false to state the below jurisdictions of law as this attorney branche one hour visit to petitioners office within the course of three months and responsibilities all take 9 months attorney organization skills are waived heretofore.

8. Petitioner fashions, social justice against injustice to thoes of his class action as ground extended as stay main-

We hereby affirm under the penalties for perjury that the foregoing statements are true and correct.

/s/ Ahmad Edwards "

Ahmad Edwards gallery:
494657 Cell: 4-T
~~Leade~~ Leading publisher
of ethnically diverse art,
director of religious faith
base groups
40. S. Alabama. St.
Indianapolis, IN, 46204

Warning: This report is confidential according to Ind. Code 35-3-1-13 and may only be released with specific authorization.

Date Ordered December 21, 2005
Date Completed January 13, 2006

<<stamped>> FILED Jan 13 2006 <<signature>>
Doris Ann Sadler

STATE OF INDIANA
PRE-SENTENCE REPORT

FACE SHEET

COURT INFORMATION

MARION SUPERIOR COURT, CRIMINAL DIVISION 6

Judge: The Honorable Grant Hawkins

Prosecutor: Mark Hollingsworth

Defense Attorney: Kevin McShane

Probation Officer: Diane Nickleson

Marion County Superior Court, Criminal Division, Probation Department

Tel. 317-327-5850

200 East Washington Street, Suite 641, Indianapolis, IN 46204

OFFENDER INFORMATION

Case No.(s): 49G059907CF121975 Gallery No. 494657

Charging Name(s): Ahmad Edwards

True Name: Ahmad Edwards

Alias(es): N/A

Address: Homeless

City: Indianapolis State: IN Zip: N/A

Ph: N/A SSN: 309-78-9239

DOB: January 29, 1973 POB: Indianapolis, I[illegible]

Age: 32 Sex: Male Ht: 5'04" Wt.: 140 Eyes: Brown Hair: Black
Race: Black

ID Marks: Upper Right Shoulder "Z AMD E"

U.S. Citizen: ☒ Yes ☐ No Alien Status: N/A

Driver's License No.: 2330-31-8286 State of Issue: IN
Status: Expired

Criminal Involvement (Check all that apply)

Charge(s) ☒ Pending ☒ Jail ☒ Felony ☐ Probation ☐ Comm. Corr.
☐ Juvenile ☐ Res. Placement
☐ Detainer(s) ☐ Prison ☐ Misdemeanor ☐ Parole ☐ Violation(s)
☐ Juvenile Detention ☐ IBS/IGS

OFFENSE INFORMATION

Present Offense(s): Ct. I, Attempted Murder (A); Ct. II, Battery (C); Ct. III, Criminal Recklessness (D) Ct. IV, Theft; Receiving Stolen Property (D)

B.A.C. N/A

Arrest Date: 7-12-99 Type of Release: None

Sentencing Date: January 17, 2006 Jail Credit: ~~2193~~ 2,381 Days

Co-Defendant(s): N/A

[2]
Ahmad Edwards
49G059907CF121975

ADDITIONAL INFORMATION

Guilty by Jury trial: The defendant was found guilty during a Jury Trial as to Ct. I, Attempted Murder as a Class A Felony; Ct. II, Battery as a Class C Felony; Ct. III, Criminal Recklessness as a Class D Felony and Ct. IV, Theft as a Class D Felony.

COMMUNITY CORRECTIONS

CHARGEBACK OFFENSE: ☐ Y ☒ N CHARGEBACK IF
SENT TO DOC: ☐ Y ☒ N
FACILITY/PROGRAM AT CAPACITY: ☒ Y ☐ N
STAFFED BY COMM. CORR.: ☐ Y ☒ N
OTHER INFORMATION:

MARITAL INFORMATION

☒ S ☐ M ☐ D ☐ W ☐ Sep

Spouse/Other: N/A
Address: N/A
City: N/A State: N/A Zip: N/A Ph: N/A
Number of Dependent Children: 0

Court-ordered Support: $0.00 per ☐ Mo. Other: No Court ordered support

EDUCATION, EMPLOYMENT, HEALTH

High School: Broad Ripple High School – 11th Grade
Graduated: ☐ Y ☒ N G.E.D. ☐ Y ☒ N
Verified: ☒ Y ☐ N
College/Vocational: N/A
N/A
Employer: Unemployed
Position: N/A $N/A/hr.
Hire Date: N/A Hrs per wk.: N/A

Mental Health Referrals ☐ Y ☒ N
Physical Problems: ☐ Y ☒ N Alcohol/drug Use: ☒ Y ☐ N

CONTACT PERSONS

1) Name: N/A Relation: Ph:
Address:
2) Name: N/A Relation: Ph:
Address:
3) Other: N/A
N/A

SENTENCING INFORMATION (Probation Use Only)

CONVICTED BY: _____ PLEA _____ BENCH
_____ JURY DATE:
CONVICTED OF:

EXECUTED TIME: SUSPENDED: LENGTH OF PROBATION:
SPECIAL CONDITIONS:

[3]
Ahmad Edwards
49G059907CF12195

PRESENTENCE INVESTIGATION

I. SOURCES OF INFORMATION

Ahmad Edwards, defendant
IPD Juvenile and Adult records
Marion County Prosecutor files
Marion Superior Court, Criminal Court Room 05, files
Indiana State Police, records
National Crime Information Center, records
Indiana Bureau of Motor Vehicle Records

II. PRIOR LEGAL HISTORY

A. Juvenile Record

The defendant has no known juvenile history in Marion County

B. Adult Record

Date	Agency	Offense	Disposition
9-16-95	IPD	Public Intoxication (B/m) 95-133864	9-17-95; Charges Not Filed.
8-26-95	Thorntown, IN	Operating Vehicle While Intoxicated (A/m) 06I019508CM1961	12-3-96; Guilty

No further information was available

3-19-97	Oklahoma City, OK	Boarding Bus with Deadly Trans to Other LE Agency or Dangerous Weapon Felony)	Unknown Disposition
7-30-98	MCSD	Criminal Trespass (A/m) 49F109807CM126385	9-9-98; Guilty, 365 days with 355 days suspended and 10 days executed

According to the Affidavit for Probable Cause, on 7-30-98 at approximately 0240 hours, Deputy Nguyen was on duty in full uniform when he received a radio

dispatch call to assist security officer on a report of suspicious persons at 1501 E. 38th Street at the Villager Lodge. Upon arrival, Deputy Nguyen was informed by the officers that they had observed two suspicious black males subjects later identified as Ahmad Edwards and Christopher Mayfield. The subjects were observed standing outside Suite #1 by

[4]
Ahmad Edwards
49G059907CF12195

the security office as he drove pass the area during a routine patrol. The security officer then saw one of the subjects forced open the window to the vacant hotel room. By the time the officer came closer to investigate, he found subjects already inside the room. One of the subjects, Ahmad Edwards, was found to be armed with a Lorcin .380 caliber semi-automatic pistol.

Both subjects admitted to Deputy Nguyen that they were inside the hotel room and that they had not paid for the use of the room. They did not have any consent from the Villager Hotel to use the room and were placed under arrest for Criminal Trespass. The pistol belonging to Mr. Ahmad was confiscated by Indianapolis Police Department officers.

7-12-99	IPD	Ct. I, Attempted Murder (A) Ct. II, Battery (C) Ct. III, Criminal Recklessness (D) Ct. IV, Theft (D) 49G059907CF121975	INSTANT OFFENSE

National Crime Information Center Records reflected an out of state arrest in Oklahoma City, Oklahoma. This Officer sent a fax request to Oklahoma County Probation Department in Oklahoma City, Oklahoma. However, as of the date of this writing, there has been no response from the Oklahoma County Probation Department.

See attached IPD Criminal History.

C. CRIMINAL ORIENTATION

The defendant has not known juvenile history in Marion County. As an adult, the defendant has experienced five (5) arrests. These arrests include: Boarding Bus with a Deadly Trans to other LE Agency or Dangerous Weapon; Public Intoxication, Criminal Trespass, Attempted Murder, Battery, Criminal Recklessness, Operating Vehicle While Intoxicated and Theft. He has prior misdemeanor convictions for Criminal Trespass and Operating Vehicle While Intoxicated. He has never been afforded the benefit of probation supervision and has never served an executed sentence with the Indiana Department of Correction.

According to the Indiana Bureau of Motor Vehicle records, the defendant's Indiana Driver's License under number 2330-31-8286 expired in January of 2000.

D. SUMMARY OF LEGAL HISTORY

See above Criminal History information.

[5]
Ahmad Edwards
49G059907CF12195

III. PRESENT OFFENSE

A. Official Version

The defendant was found guilty during a Jury Trial as to Ct. I, Attempted Murder as a Class A Felony; Ct. II, Battery as a Class C Felony; Ct. III, Criminal Recklessness as a Class D Felony and Ct. IV, Theft as a Class D Felony.

Count I, reads, Ahmad Edwards, on or about July 12, 1999, did attempt to commit the crime of Murder, which is to intentionally kill another human being, namely: Ryan Martin, by engaging in conduct, that is: intentionally shooting a deadly weapon, that is: a handgun, at and toward Ryan Martin, with the intent to kill Ryan Martin, which conduct constituted a substantial step toward commission of said crime of Murder.

Count II, reads, Ahmad Edwards, on or about July 12, 1999, by means of a deadly weapon, that is: a handgun, did knowingly touch Robert LeClerc in a rude, insolent, or angry manner, that is: shot at and against Robert LeClerc with said handgun.

Count III, reads, Ahmad Edwards, on or about July 12, 1999, while armed with a deadly weapon, that is: a handgun, recklessly performed an act that created a substantial risk of bodily injury to other persons, namely pedestrians in the vicinity of Washington and Meridian Streets, by drawing and discharging said handgun at and toward the person of Ryan Martin, when said pedestrians were in close proximity to Ryan Martin.

Count IV, reads, Ahmad Edwards, on or about July 12, 1999, did knowingly exert unauthorized control

over the property, that is: shoes of Parisian, Inc, with intent to deprive Parisian, Inc, of any part of the value or use of said property.

According to the Affidavit for Probable Cause, on July 12, 1999, at approximately 12:20 PM, Indianapolis Police officers were called to the intersection of Washington and Meridian Street, an area heavily populated by pedestrian traffic during the lunch hour, on a person shot. Office Bies was one of the first officers on the scene and spoke to one of the victims, Robert W. LeClerc, who stated that he was walking down the sidewalk when a black male, later identified as Ahmad Edwards, ran past him from the Parisian's Department Store. He stated that a white male, later identified as Ryan Martin, followed him and then tackled the black male, jumping on to his back.

The two began to struggle and wrestle and ended up in the street where LeClerc observed Edwards pull a gun out and fire one shot towards the street while they continued to struggle. Then, as Martin disengaged and began rolling away from him, Edwards fired another shot, which struck Martin in the back. At this time, Edwards jumped up and took two steps away, as if to cross the street and leave, then turned back towards Martin, raised the gun and aimed towards him. The shot, instead, struck LeClerc in the leg. At this time, Edwards fled with the weapon.

[6]
Ahmad Edwards
49G059907CF12195

Officer Bies spoke with Martin, who is a loss prevention officer for Parisian's. He stated that, just prior to the shooting, he saw Edwards take a pair of shoes and place them in a bag and pass all points of payment and exit the store. Martin followed him from the store and attempted to stop him and that is when the scuffle began. The next thing he knew, Edwards fired two shots, one of which struck Martin in the back. There were several witnesses to the incident. Both victims wish to prosecute.

Please see the attached Affidavit for Probable Cause.

B. Defendant's Version

The defendant is aware of and appears to understand the terms of the plea agreement reached in this case. Further, he is aware of the possible penalties the Court could impose in this matter.

The Probable Cause Affidavit was reviewed with the defendant. The defendant made the following handwritten statement: "the appointed motion of permissive intervention filed therein the Court Superior on 6-26-01, caused a stay of action and upon it's expiration or thereafter three years the plan to establish a youth program to and for the coordination of aspects of law enforcement to prevent and reduce crime among young people in Indiana became a diplomatic act. As under the safe streets act of 19(unknown), "an omnibus considerate agent: I membered clients within the public and others that at production of the Courts actions showcased causes. The costs of the stay, (Trial Rule 60), has a derivative property that is: my knowledge events as not unexpended to contract the membered clients is the commission of finding a facilme for this plan or

projects to become organization of administrative recommendations conditioned by governors."

Please see the attached Defendant's Statement.

IV. VICTIM'S IMPACT STATEMENT

This Officer sent a Victim's Right's and Restitution Information package to the victim, Ryan Martin, informing him of his rights and the date and time of sentencing. This package has not been returned.

On 1-13-06, this Officer attempted to contact Mr. Martin at his listed telephone number. However, there was no answer and no answering machine to which to leave a message.

On 1-13-06, this Officer sent a GroupWise e-mail message to Marion County Prosecutor, Mark Hollingsworth, informing him of the lack of response from the victim and the inability to make contact with the victim.

This Officer sent a Victim's Right's and Restitution Information package to the victim, Robert LeClerc, informing him of his rights and the date and time of sentencing. This package has not been returned. However, this Officer spoke with Mr. LeClerc

concerning the Instant Offense. Mr. LeClerc stated he does not have any input to make and he did not suffer any losses. He stated he was just a bystander in the wrong place at the wrong time. He reported no animosity towards the defendant. He indicated everything was covered by his insurance and his company. He stated he believes the Judge knows best

when it comes to the defendant's sentencing and he will not be attending the sentencing hearing but would like to know what sentence the defendant receives.

V. FAMILY/PERSONAL BACKGROUND

A. Family

The defendant was born on January 29, 1973, in Indianapolis, Indiana. The defendant's parents, Alonzo Weathers and Beverly Curtis were most likely married at the time of the defendant's birth. However, he stated he is unsure if they were ever really married or not. The defendant related his father was murdered before he was two years old and he does not have any further information concerning his father. The defendant reported he was raised by his mother and stated he had a happy childhood. He reported no abuse or neglect by his mother and stated she did not abuse alcohol or illegal substances. The defendant's sister, Amber Weathers committed suicide in 2005.

The defendant reported he lived in Nashville, Tennessee for approximately 10 years. He indicated he resided in Chicago, Illinois for a couple of months prior to moving to Nashville. He also has resided in Phoenix, Arizona and most recently Miami, Florida. He stated he had only been back in the Indianapolis area for approximately 6 months after returning form Miami, Florida, before his arrest on the Instant Offense.

B. Marital/Dependent Status

The defendant has never been married and has no children.

C. Education

The defendant stated he attended Broad Ripple High School completing the 11th grade. He stated he was enrolled in Special Education Classes but also was in magna arts classes. He reported this made it difficult for him because his friends would tease him about being in "special" classes. He stated he quit school he stated because "approximately two hours of travel noted purses weaking." He also related he was suspended from school for "privileged communications." The defendant further stated he would like to pursue in the future "decision to reform public servant honors to legislator's official office of education degree at political science."

According to records from Broad Ripple High School, the defendant was enrolled at Broad Ripple High School from September 1986 until September 1987. He did not receive any credits and received mostly failing grades during that time period.

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Ahmad Edwards
49G059907CF12195

D. Employment

The defendant reported past employment with Burns Security and Allied Security although he could not remember the dates of employment. He stated prior to his arrest, he was self-employed trying to start a youth program to steer kids away from crime. He also stated while in Miami, Florida prior to moving back to Indianapolis, he was self-employed trying to work with the inner city youth. He stated he would like in the future to be self employed cultivating city and public works.

E. Military

N/A

F. Financial

The defendant has no known source of income at the present time. He reported no assets and no outstanding debts.

G. Religion

The defendant indicated he is both Christian and Baptist and last attended church services in 1999.

H. Interests and Leisure Activities

The defendant enjoys doing research in prevention of crime.

VI. HEALTH

A. Physical

The defendant related he is in excellent physical health at the present time. However, he stated he does suffer from high blood pressure but is not currently taking any prescription medications. He stated he suffered a gunshot wound on the date of the Instant Offense stating "Federal Officer in this case depositioned fired and hit left leg."

The defendant has no known allergies and does not suffer from asthma.

According to records from Indiana University Medical Group, the defendant reported in September of 1995, he was in a motor vehicle accident with a loss of consciousness. At the time of arrival at Methodist Hospital he has a Glasgow Coma Scale of 14 out of 14. It was noted that according to medical records he had an approximate five minute loss of consciousness

and he was incontinent of urine." He was diagnosed with a closed head injury and acute alcohol intoxication and scalp laceration with repair. It was reported his scalp laceration was in the right frontal region. It was also reported the defendant was hit as a pedestrian (by his report) but he did not know the date of the accident. He reported

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Ahmad Edwards
49G059907CF12195

after this accident his "right leg drew up." He stated he lost his job at that time because of increased fatigue and decreased range of motion in his leg. He further reported he also broke his left collarbone in this accident.

B. Mental

The defendant rated his emotional health as excellent. He stated he does not suffer from depression, anxiety, nervousness and has never been diagnosed with a mental health problem. He related he was hospitalized for a short period of time and received a "Court examined state of available mental support finding liability to stand trial" in the past.

According to records from Indiana University Neuropsychological Group, the results of the neuropsychological examination "point towards a patient who clearly has a compromise of brain functions." "He has decreased motor speed on the the left upper extremity for fine motor dexterity and coordination and he is extraordinarily impulsive, disinhibited and has impairments of his ability to maintain cognitive set." "He has difficulties learning new cognitive strategies and is extremely slow in this

respect." "These findings are consistent for patients who have frontal lobe injuries, particularly orbital and mesial surfaces of the frontal lobes."

Further, it was reported the defendant "clearly presents with a delusional disorder, grandiose type and he does endorse olfactory hallucinations." Lastly, "these are neurobehavioral changes that are seen with frontal lobe brain damage. Additionally, Dr. Trexler, suspected the patient also has a major thought disorder, such as schizophrenia.

Further, Dr. Trexler indicated "it is also obvious that he was under a great deal of stress at the time this offense occurred, and it seems likely that he was psychotic at the time of the offense secondary to the interactive effects between frontal lobe damage and significant environmental stresses. He uses his delusional system to cope with profound feelings of inadequacy and his very strong family history of psychiatric illness certainly provides for a predisposition towards a major psychiatric illness that is now made even worse by frontal lobe dyscontrol.

It should be noted, the defendant has been involved in counseling and treatment at Logansport State Hospital during the pendency of the Instant Offense.

C. Substance Abuse

The defendant stated he does not really consume alcohol but will drink "table" wine on occasions when having diner with a friend. He reported one arrest for Public Intoxication prior to turning 21. It should be noted, the defendant was convicted of Operating Vehicle While Intoxicated in 1996 in Thorntown, Indiana.

The defendant reported he "experimented" with marijuana back in 1990 and used less than a year or two. He stated he then would use off and on until finally he quit smoking marijuana in 1992.

[9]
Ahmad Edwards
49G059907CF12195

The defendant stated he "experimented" with cocaine while in high school but only used two or three times.

He denied any use of any other illegal substances and reported no prior substance abuse treatment.

VII. EVALUATION/SUMARY

Ahmad Edwards, a black male, age 32, is before the Court after being found guilty during a Jury Trial as to Ct. I, Attempted Murder as a Class A Felony; Ct. II, Battery as a Class C Felony; Ct. III, Criminal Recklessness as a Class D Felony and Theft as a Class D Felony.

Under I.C. 35-50-2-2, it appears the Instant Offense is non-suspendable.

Aggravating Circumstances:
To be determined by the Court.

Mitigating Circumstances:
To be determined by the Court.

VIII. RECOMMENDATION

The sentence is left to the Court's discretion.

Should the Court impose any period of probation supervision, it is recommended the following fees be assessed:

Administrative Fee: Felony = $100

Fine: to be determined by Court.

Court Costs: $156.00.

Probation User Fees: Felony = $100.00 Initial Fee, $30.00 Monthly Supervision Fee

Public Defender Fee: to be determined by the Court.

Urinalysis Fee (Non-Alcohol and Drug Cases):

Class A, B, or C Felony = $200.00 flat fee.

[10]
Ahmad Edwards
49G059907CF12195

It is further recommended that the defendant be ordered to pay any additional applicable fees.

Respectfully submitted,

/s/ Diane Nickleson
Diane Nickleson
Probation Officer

Amended

AFFIDAVIT

FOR PROBABLE CAUSE

STATE OF INDIANA, COUNTY OF MARION, SS:

Det. Tony Brown swears (affirms) that:

On July 12, 1999, at approximately 12:20 P.M., Indianapolis Police Officers were called to the intersection of Washington and Meridian Street, an area heavily populated by pedestrian traffic during the lunch hour, on a person shot. Officer Anna Bies was one of the first officers on the scene and spoke to one of the victims, Robert W. LeClerc, who stated that he was walking down the sidewalk when a black male, later identified as Ahmad Edwards, ran past him from the Parisian's Department Store. He stated that a white male, later identified as Ryan Martin, followed him and then tackled the black male, jumping on to his back.

The two began to struggle and wrestle and ended up in the street where LeClerc observed Edwards pull a gun out and fire one shot towards the street while they continued to struggle. Then, as Martin disengaged and began rolling away from him, Edwards fired another shot, which struck Martin in the back. At this time, Edwards jumped up and took two steps away, as if to cross the street and leave, then turned back towards Martin, raised the gun up and aimed towards him. The shot, instead, struck LeClerc in the leg.

At this time, Edwards fled with the weapon.

I spoke with Martin, who is a loss prevention officer for Parisian's. He stated that, just prior to the shooting, he saw Edwards take a pair of shoes and place them in a bag and pass all points of payment and exit the store. Martin followed him from the store and attempted to stop him and that is when the scuffle began. The next thing he knew, Edwards fired two shots, one of which struck Martin in the back.

There were several witnesses to the incident.

Both victims wish to prosecute.

All of events occurred in Marion Co., IN.

I swear (affirm), under penalty of perjury as specified by IC 35-44-2-1, that the foregoing representations are true.

Dated July 12, 1999	/s/ Tony L. Brown
	AFFIANT
/s/ J [illegible]	
DEPUTY PROSECUTING ATTORNEY	JUDGE
NINETEENTH JUDICIAL CIRCUIT	

DEFENDANT'S VERSION OF THE INSTANT OFFENSE

IF YOU WISH TO MAKE A STATEMENT CONCERNING YOUR CONVICTION PLEASE DO SO BELOW (THIS STATEMENT WILL BE ATTACHED TO THE PRESENTENCE REPORT FOR REVIEW BY THE COURT.)

YOU MAY USE ADDITIONAL PAPER, IF NECESSARY.

IF YOU DO NOT WISH TO MAKE A STATEMENT, WRITE "NO STATEMENT." PLEASE SIGN AND DATE THIS PAGE.

"The appointed motion of permissive intervention filed therein the court superior on, 6-26-0001, caused a stay of action and upon it's expiration or thereafter three years the plan to establish a youth program to and for the coordination of aspects of law enforcement to prevent and reduce crime among young people in Indiana became a diplomatic act as under, the safe streets act of 1968. "A omnibuc considerate agent: I membered clients within the public and others that at/production of the courts actions showcased causes. The costs of the stay [Trial rule 60] has a derivative property that is: My knowledged events as not unexpended to contract the membered clients is the commission of finding a facilitie for this plan or project to become organization of administrative recommendations ~~earry~~ conditioned by governors

THE ABOVE INFORMATION IS CORRECT TO THE BEST OF MY KNOWLEDGE.

PLEASE SIGN AND DATE THIS PAGE

Signed /s/ Ahmad Edwards Date 12-22-05

Name _____ _____

Printed Name Ahmad Edwards

IN THE
INDIANA SUPREME COURT

<<stamped>> FILED JAN 23 2006 <<signature>>
Doris Ann Sadler

AHMAD EDWARDS

AMBERGRESS & ZENAGENCIES

PLAINTIFF/PETTIONER,

vs.

STATE OF INDIANA
AND THE HONORABLE GRANI
HAWKINS,
AS JUDGE
THEREOF,

RESPONDENTS.

PETITION FOR WRIT MANDAMUS

This act comes herein now before Supreme Court of Indiana on the application of petition at Writ of Mandamus against respondent.

Petitioner alleges preliminary injunction in cause number 49G059907CF121975 that court or respondent conducted a hearing on petitioner in 2005.

Accordingly, it is that respondents are to as thereof, stay of petitioner at the criminal rule 4's verbatim recital of plaintiff/petitioner ~~rule~~ §1203[6] of Title 1 of the omnibus crime control and safe streets act of 1968 is: to stimulate the research and development of methods for prevention and reduction of crime that the regulation of the Rule 62 [E] missions, agents no obligation.

Respondent then denied the law and petitioners relief is a order of release.

/s/ Ahmad Edwards
Ahmad Edwards
Plaintiff Petitione

IN THE
INDIANA SUPREME COURT

5.49 A-10.2

AHMAD EDWARDS

PLAINTIFF/PETTIONER,

vs.

THE MARION SUPERIOR COURT, AND THE STATE OF INDIANA

RESPONDENT.

PETITION FOR WRIT MANDAMUS

This act comes herein now before Supreme Court of Indiana on the application of petitioner at Writ of Mandamus against respondent.

Petitioner alleges respondent shall not hold a party to enter its' location on the court to answer a criminal charge for a period in aggregate embracing more than one year from date criminal charge against such party is filed.

Respondent promulgated petitioner in aggregated embracing for more than six years from date criminal charge against plaintiff/petitioner was filed.

Respondent affirmed the criminal rule 4[C] on May 29, 2001. Plaintiff filed a motion in regard to petitioner being discharged and at respondent's failure entered a notice on effect of criminal rule 4[c] on September 13, 2004. Plaintiff/Petitioner held by superior circuit court will be freed in nine years or limited to a discharge of the cause number: 49G059907CF121975 by the Respondent.

Respondent then denies the law and petitioners relief is a order of release.

/s/ Ahmad Edwards
Ahmad Edwards
Plaintiff Petitioner

Form/

5.47 A-10.1

<<stamped>> JAN 23 2006 <<signature>>
Doris Ann Sadler

IN THE
INDIANA SUPREME COURT

AHMAD EDWARDS

PLAINTIFF/PETTIONER,

vs.

THE MARION SUPERIOR COURT, AND THE STATE OF INDIANA,

RESPONDENT.

PETITION FOR WRIT MANDAMUS

This act comes herein now before Supreme Court of Indiana on the application of petitioner at Writ of Mandamus against respondent.

Petitioner alleges respondent shall not hold a party to enter location on the court to answer a criminal charge for a period in aggregate embracing more than one year from date criminal charge against such party is filed.

Respondent promulgated petitioner in aggregated embracing for more than six years from date criminal charge against plaintiff petitioner was filed.

Respondent affirmed the criminal rule 4[C] on May 29, 2001 Plaintiff filed a motion in regard to petitioner being; discharged and at respondents failure entered a notice on effect of the criminal rule 4[C] on September 13, 2004. Plaintiff/petitioner held by superior circuit court will be freed in nine years or limited to a discharge of the cause number 49G059907CF121975 by the respondent.

Respondent then denies the law and petitioners relief is a order of release.

/s/ Ahmad Edwards
Ahmad Edwards
Plaintiff Petitioner

Form/

5.47 A-10.1

IN THE
INDIANA SUPREME COURT

AHMAD EDWARDS
AMBERGRESS & ZENAGENCIES

PLAINTIFF/PETTIONER,

vs.

STATE OF INDIANA
AND THE HONORABLE GRANT HAWKINS,
AS JUDGE THEREOF,

RESPONDENT.

PETITION FOR WRIT MANDAMUS

This act comes herein non before Supreme Court of Indiana on the application of petitioner at Writ of Mandamus against respondent

Petitioner alleges preliminary injunction in cause number 49G059907CF121975 that court or respondent conducted a hearing on petitioner in 2005.

Accordingly, it is that respondents are to as: thereof stay of petitioner at the criminal rule 4.[6] verbatim recital of plaintiff/petitioner §1203 [6] of title of the omnibus crime control and safe streets act ~~act~~ of 1968 is: To stimulate the research and development of methods for prevention and reduction of crime: provide for organizing the the regulation of the rule 62[E] The missions agents no obligation.

Respondent then denied the law and petitioners relief is a order of release.

/s/ Ahmad Edwards
Ahmad Edwards
Plaintiff Petitioner

5.49 A-10.2

Edwards Exhibits

A Pome by:"Ahmad Edwards"

"Triglycerides Osmotic"

"Render unto me the due benevolence: that thine hands have made me and fashioned me together again with by those who walk in the law and has commanded us to keep diligently statutes so that I shall not be ashamed, or forsaked utterly: and caused me to multiply increased excellent judgment by effect that may consider all my works. You are my help and my shield worketh your righteousness I know that it is great and above all as you are my saviour from ignorance: who shall change my vile body other than you working whereby all things able

"ORDER DRESS CODE"

AGENCY FORM [8007]

[continued on page : of:]

O how I wish you could have been my father a witness of me in the wilderness, speaking unto me, "Go make yourself according to the fashion of her so that you may be seen."

"Triglycerides
Osmotic"

by : Ahmad
Edwards

"MOTION FOR COMPETNET
DRESS CODE"

AGENCY FORM [8006]

[continued on page: of:]

Dear: Mr. Trexler: A patient

"Everything stands with what you have discovered so far in court and I hope it will include much more. I'm extremely happy to learn these things they have made me a bright, and more practical young man and surprisingly more creative."

"You are like the father I'v looked for for years but could never find. You are genuinely helpful. How can I become a career man - a person like you that makes such good sense" and is so useful to anyone? You are truly not indispensable, in my life. I wish I could always get your advice, and learn some of your tricks of the trade. I thank you: for contributing generous hours helping, with your assistance and encouragement as our work progressed and I offer my gratitude to you and a special thank you to your staff and their supporters.

Sincerely:

/s/ Ahmad Edwards

Mr. "Ahmad Edwards"

"DAYS OF TRAVIL":
"APRIL"-2005

1. U.S. - New Zeland, 3;days
2. New Zeland - U.S. 3;days
3. U.S. - England 3; days

Total
9 days

Brilliance of assessment to demonstrate right by the Attorney General conditions for mental illness of the gravely disabled to be eligible persons at ports of entry or debarkation; temporary care; arrangements with state or other public or nonprofit agencies; payment or reimbursement for care and treatment."

"Could being in need for hospitalization as mentally ill make me a national for foreign countries? § 321. say's so under "eligible person" is there a foreign country with regulations you have prescribed? And will the ~~seerea~~ Secretary of Health transfer me? The finest of provocation;"

/s/ Ahmad Edwards
Ahmad Edwards

to them that tran

"Being appropriate: and just at the right time I stand able to place myself at the date of a hearing in the jurisdiction to ~~enfore~~ enforce federal law providing for the treatment of persons with developmental disabilities. To order a plan of treatment to be followed, and to order officials to seek funds for this development of plan which would provide the best means of success. "For this I will, need a display of its procession that can clearly and particular in form for forum of a judicial consderation not reach failure for a release thats compelled with the the U.S. Military or defense contractors

Pending a regular commitment hearing, absent this indication dismissal of proceedings will not be ordered. Therefore a mental institution maybe where I need to go, yet not to one: however the courts endeavors to aid me: that stands in bad faith."

"At one of the hearings you made a statment that was "tainted," when the trial court tryed to order an commitment to "Logansport State Hospital" [and the latest stated.....I was not effectively treated during the last stay at Logansport filed on Nov 26, 2002] allied

Mr. Adam C. Collins is the c

Dear: "Mr. Trexler"

"As a petitioner for habeas corpus who was insane at the time when I was detained and sit herenow at the county jail , I'm not entitled to be wholly discharged until cured. Yet a petition in habeas corpus proceedings is or will be held insufficient for not alleging facts that the petitioner is or was sane at the time of commitment or at the time the petition for habeas corpus is filed."

"A dismissal of the proceedings protects not my due process rights as an individual who is mentally ill and detained: as such a individual could seek a habeas corpus for release

IN THE

SUPREME COURT OF INDIANA

Cause No. 49S02-0705-CR-202

AHMAD EDWARDS,	)	Appeal from the Marion
	)	Superior Court, Criminal
	)	Division 5,
Appellant (Defendant	)	
Below),	)	No. 49G05-9907-CF-
vs.	)	121975,
	)	
STATE OF INDIANA,)	)	
	)	
Appellee (Plaintiff	)	The Hon. Grant Hawkins,
Below)	)	Judge.

<<stamped>> FILED JAN 30 2008
<<SIGNATURE>>
Kevin S. Smith
CLERK OF THE INDIANA SUPREME COURT
COURT OF APPEALS
AND TAX COURT

Verified Notice of Submission of Additional Transcripts

The State notifies this Court of its submission of five additional transcripts for transmission to the Supreme Court of the United States pursuant to the Writ of Certiorari granted on December 7, 2007. These transcripts have not previously been submitted to the Clerk of this Court. Each of these transcripts is from pre-trial proceedings in this case and has

been transcribed and certified by an official court reporter of the Marion County Superior Court:

1. Transcript of the Competency Hearing held on February 2, 2000. Certified by the court reporter on March 26, 2003.
2. Transcript of the Competency Hearing held on February 16, 2000. Certified by the court reporter on March 23, 2003.
3. Transcript of the Competency Hearing held on March 20, 2002. Certified by the court reporter on April 2, 2003.
4. Transcript of the Competency Hearing held on April 29, 2003. Certified by the court reporter on January 7, 2008.
5. Transcript from a pre-trial hearing immediately prior to Defendant's first trial on June 27, 2005. Certified by the court reporter on January 28, 2008.

The State is submitting original transcripts with original certifications. These transcripts have not been altered by the State.

While not previously reviewed by the Supreme Court of Indiana or the Indiana Court of Appeals, these transcripts are already part of the appellate record pursuant to Indiana Appellate Rule 27. That Rule states that the record on appeal includes "all proceedings before the trial court . . . whether or not transcribed or transmitted to the Court on Appeal."

Respectfully submitted:

STEVE CARTER
Attorney General of Indiana

Atty. No. 4150-64

By: /s/ Justin F. Roebel
Justin F. Roebel
Deputy Attorney General
Atty. No. 0023725-49

Verification

I affirm under the penalties for perjury that the foregoing representations are true, correct, and complete to the best of my knowledge and belief.

/s/ Justin F. Roebel
Justin F. Roebel

Certificate of Service

I do solemnly affirm under the penalties for perjury that on the 30th day of January, 2008, I served upon the Defendant, by counsel, in the above-entitled cause one (1) copy of Appellee's Notice by depositing the same in the United States mail first-class postage prepaid, addressed as follows:

Michael R. Fisher
151 N. Delaware St.
Suite 200
Indianapolis, IN 46204

/s/ Justin F. Roebel
Justin F. Roebel
Deputy Attorney General

Office of Attorney General
Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204-2770
Telephone (317) 233-2459

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE SUPERIOR COURT OF MARION COUNTY
CRIMINAL DIVISION, ROOM FIVE

STATE OF INDIANA, Plaintiff,	)	
VS.	)	CAUSE NO. 49G05-9907-CF-121975
AHMAD EDWARDS, Defendant.	)	

TRANSCRIPT OF COMPETENCY HEARING

BEFORE THE HONORABLE
GARY L. MILLER, JUDGE
CRIMINAL DIVISION, ROOM FIVE
ON FEBRUARY 2, 2000

Shelly D. Glore, Official Court Reporter
In The Superior Court of Marion County, Indiana
Civil Division, Room Two

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE SUPERIOR COURT OF MARION COUNTY
CRIMINAL DIVISION, ROOM FIVE

CAUSE NO. 49G05-9907-CF-121975

STATE OF INDIANA,)
Plaintiff,)
vs.)
AHMAD EDWARDS,)
Defendant.)

APPEARANCES

FOR THE STATE OF INDIANA:

Donald Pitzer

MARION COUNTY PROSECUTOR'S OFFICE

200 East Washington Street

Suite T560, City-County Building

Indianapolis, Indiana 46204

[FOR THE DEFENDANT, AHMAD EDWARDS:]

Diane Abel

MARION COUNTY PUBLIC

200 East Washington Street

Suite 1260, City-County Building

Indianapolis, Indiana 46204

Shelly D. Glore, Official Reporter
In the Superior Court of Marion County,
Indiana

Civil Division, Room Two

***

[4]

WITNESS APPROACHES WITNESS STAND

The Court, in order to maintain the issues in its behalf, offered and introduced the following into evidence, to-wit:

DR. DWIGHT SCHUSTER

a witness called on behalf of the Court, who, after first having been sworn to testify the truth, testifed as follows, to-wit:

DIRECT EXAMINATION,

***

[5]

Direct Examination of Dr. Schuster

Q Doctor, have you had the opportunity, at the request of this Court, to examine the defendant in this case, Ahmad Edwards?

A I did, sir.

Q Will you summarize your findings and conclusions for us, please.

A I examined Mr. Edwards in the -- in a private room in the Marion County Jail on December 14, 1999. The examination consisted of a standard psychiatric evaluation of eliciting history and observing the defendant, history particularly relevant to the present charges and past history of possible nervous or mental conditions. Carried out a mental status evaluation.

I also did talk with his mother and his grandmother. And I reviewed lengthy letters

which Mr. Edwards had written to both the prosecutor and to his attorney.

As a result of my examination, it was my opinion that Mr. Edwards has two rather distinct conditions: The first, a learning disability, which is classified as a developmental and expressive writing disorder and expressive language disorder, and the second diagnosis is that of a delusional disorder, grandiose type.

[6]

As a result of my examination, it's my opinion that Mr. Edwards does have understanding that he's charged with a crime and he has a general common understanding of the legal procedures thereon, and he is able to communicate with his attorney, although his delusional ideas may create some problems at times. But I do believe that he's competent to stand trial at this time.

Further, I believe that he was of unsound mind, in the legal sense of that term, on or about July 12, 1999, in that he was suffering from a mental disease which impaired his appreciation of the wrongfulness of his conduct.

Q Did you summarize your findings and conclusions to us in a letter dated December 31, 1999?

A Yes.

Q This document entitled -- or marked Court's Exhibit 2 (indicating)?

A Yes, that is my report.

THE COURT: Any objection from the State to the admission of Court's Exhibit 2 for the purpose of this hearing?

MR. PITZER: No, Judge.

THE COURT: Miss Abel?

[7]

MS. ABEL: No, Judge.

THE COURT: Okay. Court's Exhibit 2 will be admitted without objection from the State or the defense. Would you care to cross-examine, Mr. Pitzer?

MR. PITZER: Thank you, Judge.

***

[13]

CROSS-EXAMINATION

QUESTIONS BY MS. ABEL:

Q Doctor, you talked about Mr. Edwards and his difficulty in communicating, in that he had

[14]

these grandiose delusions and about himself and his role in the community and with his lawyers.

A Well, yes, to some extent, his grandiose delusions; probably more his learning disability that may create some difficulties in communication.

Q Okay. So his learning disability and the delusions, in combination. How much time did you spend with Mr. Edwards over at the jail?

A It was over an hour.

Q And during that hour of conversation with Mr. Edwards, was he able to stay focused on your questions?

A Focused, except with the idea that he went on and on in considerable detail and in a disconnected fashion.

Q Did you have difficulty in getting direct answers from Mr. Edwards when you asked him questions?

A Yes.

Q And was he easily -- did he easily change the subject and want to talk about his -- the journal that he keeps in jail, his -- his idea of solving the world's problems, getting the prosecutor's ideas about how to take care of

[15]

crime from the city, things of that nature?

A Yes, he did go off on tangents.

Q And, Doctor, did you also review some letters that Mr. Edwards had written, both to the prosecutor and myself?

A I did.

Q And would you classify those as coherent, concise, directed letters, or letters of a very sort of bizarre, undirected, delusional sort?

A Well, the letters certainly -- certainly were not concise or direct, in that they were full of grammatical errors, spelling errors, word choices that were inappropriate, sentences that actually amounted to three or four sentences at a time --

Q Okay.

A -- which is in -- in keeping with the expressive writing disorder.

Q Okay. Did the contents -- we were just talking about the structure, basically, there. But did the content also play out with his grandiose delusional disorder, in the sense that he was talking about, again, ways to save the world and plans for the prosecutor to stop crime, and things like that, in the letters?

[16]

A As I recall, they did.

Q Okay. And, Doctor, would these -- the learning disability, the delusional disorder are going to affect the way Mr. Edwards is going to be able to communicate with his attorneys.

A Well, yes, they do influence it.

Q Influence it, okay. Influence it in the sense that his attorneys are not giong to be able to get straight answers from him?

A Well, no, more that it takes more time to redirect him to answering and to sorting out some of the chaff.

Q Okay. But he's not going to be focussed on the important facts of the case, perhaps?

A I'm not certain about that. He's pretty well-acquainted with the facts of the case.

Q Okay. But he's going to go off on tangents? He goes off on tangents when we try to communicate with him?

A Yes.

Q Okay. He is going to talk and speak in a disconnected fashion when we try to communicate with him?

A Yes.

Q And all of this would impair the ability of his

[17]

attorneys to communicate with Mr. Edwards and get this case together?

A To some extent.

***

[19]

THE COURT: Thank you, sir. You may step down. Call Dr. Masbaum.

WITNESS APPROACHES WITNESS STAND

The Court, in order to maintain the issues in its behalf, offered and introduced the following into evidence, to-wit:

DR. NED MASBAUM

a witness called on behalf of the Court, who, after first having been sworn to testify the truth, testified as follows, to-wit:

THE COURT: Please be seated.

DIRECT EXAMINATION

QUESTIONS BY THE COURT:

Q Would you give us your name for the record, please.

A Dr. Ned Masbaum.

Q What is your business or occupation?

A Physician, specializing in psychiatry.

***

[22]

CROSS-EXAMINATION

QUESTIONS BY MS. ABEL:

Q Dr. Masbaum, just briefly, do you -- does Mr. -- did Mr. Edwards have problems communicating with you, difficulty communicating in a direct -- in a directed way?

A He would answer my initial questions that I would ask him. And then I follow up with questions of clarification. He would then ramble and avoid answering the questions.

Q Did he also go off on tangents and different sorts of issues, other than what you were there to discuss with him?

A At times he did. He went into detail about writing the prosecutor and -- to compliment the prosecutor in what a good job he had done, and how he had wanted to assist the prosecutor in

[23]

his future political campaigns, and offered himself as an agent for the prosecutor.

Q And did Mr. Edwards talk about, or did you read in the letters that I sent to you, about his goal for saving the world, and things of this nature, and how he was going to help the youth and -- and --

A Yes, I read that.

STATE OF INDIANA)
COUNTY OF MARION) SS:

IN THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM FIVE
THE HONORABLE GARY MILLER
PRESIDING JUDGE

STATE OF INDIANA)
AHMAD EDWARDS)

TRANSCRIPT OF THE RECORD
COMPETENCY HEARING
AUGUST 16, 2000

***

[3]

L A N C E E. T R E X L E R, having been duly sworn to tell the truth, the whole truth and nothing but the truth in said cause of action; testifies as follows:

DIRECT EXAMINATION

QUESTIONS BY MS. ABEL, ATTORNEY FOR THE DEFENDANT

Q Dr. Trexler, please state your name and spell your last name for the Court Reporter.

A Lance Emerson Trexler, T-R-E-X-L-E-R.

Q And Dr. Trexler, how are you employed?

A I am employed by Community Hospitals of Indianapolis as the Clinical Director for the Center for Neurolog Rehabilitation, and I'm a clinical assistant professor, [4] Department of Physical Medicine, Rehabilitation at I.U. School of Medicine, and assistant professor in

the Department of Psychology at I.U.P.U.I., and adjunct assistant professor at Purdue University Department of Psychology.

Q And your specialty is neuropsychology, is that correct?

A That's correct.

***

[5]

Q And have you met with and know Ahmad Edwards?

A Yes, I have.

Q And he's the Defendant whose sitting here at the table with us, correct?

A That's correct.

Q And how much time did you spend with Mr. Edwards?

A I spent about an hour and a half or an hour and forty-five minutes interviewing him.

Q Did you also look over medical records and documents provided by Mr. Hill and I in relationship to Mr. Edwards?

A Yes.

Q And was Mr. Edwards given some neuropsych exams, as well?

A Yes. He was given a rather extensive battery of neuropsychological tests to look at a range of human abilities and personality functions.

***

[8]

Q Now, you've just recited five or six things where he's average, but your final conclusion is that he's not competent and was not seen at

the Department of Psychology at I.U.P.U.I., and adjunct assistant professor at Purdue University Department of Psychology.

Q And your specialty is neuropsychology, is that correct?

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***

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A Yes. He was given a rather extensive battery of neuropsychological tests to look at a range of human abilities and personality functions.

***

[8]

Q Now, you've just recited five or six things where he's average, but your final conclusion is that he's not competent and was not seen at

the time of the event, so what leads you to those conclusions, what tests and what countervailing evidence do you have?

A Well, of course, let me preface my answer by saying that brain functions, there are many of them, and these functions are complex and so that's why we have a whole battery of tests because measuring one function doesn't tell you about somebody's brain. Mr. Edwards was also found to be impaired however on his coordination, on his left hand it was noted to be impaired compared to the right. He was severely impaired with respect to cognitive [9] control and impulsivity and was severely impaired on a measure of what I would describe as working memory, meaning keeping focused and regulating what it is that you are thinking about, and trying to do at any one time. And as an example of that on a particular test that's called the Past Auditory Serial Addition Test, the score comes out in a variety of ways, but the main way is in what are called T-scores, where a T-score of fifty is average, and a T-score of seventy would be better than average, and a T-score of thirty would be lower than average and potentially impaired. And Mr. Edwards' score on that test was a minus thirty-two (-32) T-score. He was noted to be very perseverative during learning and memory tasks, which means that he repeats himself without being aware that he's repeating himself. On problem solving tasks, he would develop the right strategy to solve a problem and then spontaneously forget or lose where it was he was going and end off in a

different direction. And lastly the results point towards the presence of a significant learning disability. Despite average IQ's his reading percentile was noted to be at the 12th percentile, but spelling was at the 1st percentile and mathematics was at the 2nd percentile.

Q Doctor, so after taking these tests and finding these impairments what would your diagnosis be as to the cause?

[10]

A The results clearly point towards brain impairment and the best explanation I can find for that in context of an individual who grew up with a rather marked learning disability, in addition, it appears to be the motor vehicle accident and the traumatic head injury that he had in I believe it was 1994, my apologies, 1995.

Q So part of his impairment is due to the head injury that he sustained is your diagnosis?

A I would argue that all the impairments noted on neuropsychological examination except with respect to the learning disabilities are the result of the head injury.

Q Doctor, have you reviewed Dr.Schuster and Masbaum's reports that have been filed with the Court, is that correct?

A Yes.

Q And they both found that Mr. Edwards suffered from delusional disorder, grandiose type; do you also concur in that?

A I think that's a very accurate diagnosis.

Q And how does that diagnosis, the grandiose, delusional disorder play into these impairments?

A Well, when you're talking about neurologic and psychiatric functions, they are, at least in terms of how they affect our ability to behave they are not merely additive, they are exponential and so I guess I believe [11] that Mr. Edwards not only has learning disabilities, but has a significant thought disorder, and thirdly then has neurologic discontrol, that is, is unable to regulate the way he organizes plans and monitors his own behavior for neurologic reasons, and so that combination makes it extremely difficult for him to adapt.

Q And Doctor, as to Mr. Edwards' competence to stand trial, and the legal definition of competence to stand trial is can he participate and assist in his defense; do you have an opinion as to whether he can participate effectively in assisting his defense?

A I do have an opinion.

Q And what is your opinion?

A I think that he cannot assist in his own defense.

Q And what leads you to that conclusion?

A Well, all of the aforementioned diagnoses and their implications.

Q Well, let's talk about implications because that's what we're having the difficulty with here. In your opinion after talking to Mr. Edwards and his attorneys. Do you think he

can stay focused and talk to his attorneys about presenting a defense?

A Not at all. I don't believe that Mr. Edwards can hold together one line of thinking for more than a few minutes.

[12]

Q Now, he can certainly sit up here and say this is the Judge, that's the prosecutor, we're his attorneys, but what does that mean in relationship to his ability to communicate effectively and be focused?

A I think the data---the objective data clearly shows that Mr. Edwards can learn and he can remember wrote factual information. But the way in which he's able to use that decompensates very rapidly in anything less than a highly structured situation.

Q And have you seen some of the letters that Mr. Edwards has written that I've provided to you?

A Yes

Q And how would you describe those letters?

A They are identical to his verbal behavior, and that is they are extraordinarily tangential, disorganized, randomly organized, grandiose and reflective of a thought disorder.

Q And , Doctor, you also made an opinion as to whether Mr. Edwards was sane or insane at the time of the offense, and what is your opinion in that regard?

A I think he was clearly insane at the time of the offense.

Q And legally that means he could not appreciate the wrongfulness of his actions; is that correct?

[13]

A I think---that's correct. I think at that time Mr. Edwards was wholly absorbed in a delusional framework and was as he always is neurologically disregulated.

Q And that's an important point, I mean, you're sitting here today, Mr. Edwards is listening and is quiet, but, I mean, is that any indication of his ability to assist his lawyers and prepare his defense?

A Oh, I don't think so. I think as I said in highly structured situations where there's a very specific task at hand, that those are the circumstances under which Mr. Edwards functions at his optimum.

Q And he's charged with two counts of attempted murder. In your opinion do you think that he can adequately stay focused through a trial and more importantly stay focused with his lawyers to prepare that defense for those two very severe charges?

A Absolutely not.

Q Again, I would like to call your attention to Dr. Masbaum's and Dr. Schuster's reports. One of the---both Doctors found him competent to stand trial. You obviously disagree with those opinions, can you tell us why and why what you do would give you more credence in disagreeing with theirs and the Judge holding your opinion?

A Well, I agree with both of the Psychiatrist's who came to the conclusion of a delusional disorder, grandiose type, [14] and I think their

assessment in that respect is quite accurate. I think though that the neuropsychological data provides additional information beyond just a psychiatric disorder. And people can have a delusional disorder and have a perfectly normal brain from a cognitive standpoint, and so I don't think this represents any challenge to the findings of the other Doctors in that respect. But I do think that the cognitive aspects and the neurologic aspect of Mr. Edwards' condition adds additional perspectives into whether he is competent or not.

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[34]

THE COURT: Ms. Abel or Mr. Hill, do you want to have brief comment?

MR. INMAN: Let me say one thing then I'm going to turn it over to Ms. Abel. While I personally like my client and I hope he understands that, and I hope he doesn't think I'm talking about him as if he's not here. It's extremely difficult to do anything from a legal perspective on this case with his assistance, almost impossible.

THE COURT: And that was going to be my question. Without disclosing attorney/client confidential material whether you are able to communicate with your client well enough to prepare a defense?

MR. INMAN: My answer to that question is absolutely no. What Doctor Trexler makes sense, puts this into perspective as to what

problems we have. And frankly, if I were to repeat you the things he was saying, I'm not sure I'd be breaking a privilege because it makes no sense, you can't focus long enough to cut through to the root of the legal matter. And I would defer to Ms. Abel to make her comments on that, I don't want to speak for her.

THE COURT: Briefly.

MS. ABEL: Yes, Judge. The same thing, we cannot keep Mr. Edwards focused enough, we can't talk about the case, we can't do anything as far as preparing a defense [35] because the manifesto and the other things seem to take precedent. And I think by reading his writings that he cannot stay focused, which is what the doctor testified to. I feel we cannot adequately prepare a defense to these very serious charges, and so I would ask that you find him incompetent at this time.

THE COURT: The Court finds based all the evidence presented that Mr. Edwards is not competent at this time to stand trial. We will send a transport order sending him to a State facility for evaluation and treatment and hopefully within ninety days we'll get word back that he's been given the appropriate treatment and then becomes competent.

MS. ABEL: Thank you, Judge.

MR. EDWARDS: Thank you, Your Honor.

AND THAT WAS ALL THE EVIDENCE AND ARGUMENT PRESENTED IN THIS CAUSE ON THIS DAY

<<masthead>>

Indiana University

IU
MEDICAL
GROUP
Specialty Care

Department of Physical
Medicine and Rehabilitation

Clinical Building 368
541 North Clinical Drive
Indianapolis, Indiana
46202-5111

317-278-0200
Fax: 317-278-0206

NEUROPSYCHOLOGICAL EXAMINATION

Patient Name: Edwards, Ahmad
Date of Examination: February 23, 2000
Referral Source: Diane Abel and Robert Hill, Attorneys at Law

MEDICAL HISTORY:

This is a 27-year-old, right handed man who reports that he is ambidextrous. The accuracy of this is unclear. He also reports that he stopped at the 11th grade, and that he has a history of being diagnosed with dyslexia in approximately the 7th grade. It should be noted at this point that the reliability of this patient in terms of reporting this history is quite suspect. He appears to be consistently confused, and it also is entirely possible that he confabulates secondary to memory loss. For example, in one interview he reported a different name for his

girlfriend that he had immediately prior to the crime for he is currently incarcerated, and in another interview he gave an entirely different name. This does not appear to be purposeful or intentful, but reflective of either a significant neurologic, psychiatric, or combination of both. He does have some consistent reports, however, which may be more reliable. He has been seen by Dr. Dwight Schuster and Dr. Ned Masbaum, both of whom felt he had a delusional disorder, grandiose type.

The patient also has a history of a motor vehicle accident with a loss of consciousness on September 13, 1995. Apparently he was, according to the patient, en route to elope with his girlfriend, when his car went under a semi-tractor trailer and then the trailer rolled over the car. Again, the reliability of this report is unclear, but he was taken to Methodist Hospital Trauma Center. At the time of arrival at Methodist he had a Glasgow Coma Scale of 14 out of 14. It was noted that according to medical records he had an approximate five-minute loss of consciousness and he was incontinent of urine. He was apparently unrestrained. His head struck the windshield. Interestingly, medical records report that it was a head-on collision with the semi-tractor trailer. It was noted that in the emergency room he was alert and oriented times three, but had a wandering gaze when not focusing on the examiner's finger on visual examination. He had a scalp laceration apparently in the right frontal region. CT studies of the head showed soft tissue and scalp swelling of the right frontal region with negative midline shift or bleed. He had a diagnosis of closed head injury and acute alcohol intoxication and scalp laceration with repair. He also had a fracture of his ribs. He was seen in

follow-up with Methodist Hospital approximately 13 days later for removal of sutures and it was noted that he also had significant difficulties with range of motion with his neck.

This patient was also apparently hit as a pedestrian, by his report. It is impossible to determine in interview with him when this occurred. He reports that after this accident his "right leg drew up." He also reports that he lost his job at that time because of increased fatigue and decreased range of motion in his leg. He reports that he broke his left collarbone in this accident. He reports that there was no loss of consciousness.

By way of history, he apparently has a mother who is living in Phoenix. His father died in approximately 1974 to 1976. He apparently was shot in a drug deal, according to Mr. Edwards' report. He has a sister who was apparently recently diagnosed with AIDS and is schizophrenic. There is apparently a long family history of major psychiatric illness. School records from Broad Ripple High School suggest that at least in 1987 his grades were mostly Fs with two Cs. Testing done with apparently the Iowa Test of Basic Skills in March 1988 shows that he was mostly in the 3rd to 5th grade for all levels of academic functioning, and at that time he was in the 9.6th grade.

NEUROPSYCHOLOGICAL FINDINGS:

In consultation with this patient, it is noted that he is quite tangential, expansive, and disorganized in his

verbal output. He initially starts off with some structure, but then quickly decompensates. It is noted in the file that he has written extensive and disorganized letters to a variety of people which are delusional in nature and as previously diagnosed certainly grandiose.

With respect to his pedestrian accident, Mr. Edwards reports that he was hit at 71st and Michigan Street when he was crossing the street. He said that he broke a collarbone and his hip and back. He is unable to reliably tell where he was hospitalized. At this time, he reported that this was in 1993 or slightly before. He also reports a motor vehicle accident, again in 1993. He reports that he had a loss of consciousness and hit the windshield. He reported that he was with his girlfriend and they were eloping. Mr. Edwards reports that he was unconscious until he was hospitalized, although this may have represented posttraumatic amnesia rather than loss of consciousness. He reports that he was in the hospital for four to five hours and then released. He spontaneously reports that he often gets these two accidents confused.

Mr. Edwards goes on to say that after these two accidents "nothing was going right." He reports that he became very depressed and was very concerned about his sister, who was apparently using drugs and prostituting in his apartment. He said that life had been going well prior to the accident, and that things were "spectacular." When questioned about his arrest, he said that life prior to this time "was mind-boggling." He apparently had set certain goals for himself, which probably reflected some grandiose delusion, and then his sister had been diagnosed with

AIDS and a "mental illness." Apparently his sister relocated to Indianapolis and was living with him intermittently and also was using drugs. She also apparently lived with his grandmother, who then according to Mr. Edwards had a stroke secondary to stress one week prior to the robbery. His sister apparently had significant financial difficulties and he was trying to help her pay some of her bills. He reports that she began prostituting to make money. Apparently he then started to break up with his girlfriend secondary to the stress. He was "trying to be a man in life for the first time" with his girlfriend and help with her three children, but things were falling apart by his report. He indicated, "her pimps were trying to get him to do things to pay her debts" with

reference to his sister. In the meantime, Mr. Edwards also indicated, exemplary of his delusional system, that he had decided to build three to four "dream homes." Then he goes on to say that he was considering suicide the day before the offense for which he was arrested. He apparently locked himself in his apartment and held his gun to his head while he was talking to his ex-girlfriend on the phone. He reports that he hung up and loaded the gun and sat down on the couch, and the gun went off and apparently the bullet went through the couch and the wall, according to his report. He reports that he began crying, and that his ex-girlfriend showed up at his door. He reports feeling very confused at that time. In interview he also reports that his sister was

dating a man who was apparently involved in his father's murder and that he was watching his sister have sex with his father's murderer prior to this event. He reports seeing her naked with five to six men in his apartment, and reports that this was "totally confusing" to him. Mr. Edwards also reports that since he has been in jail he has encountered one of the indviduals who shot his father and apparently in his mind this individual told him that if he sought revenge the same thing would happen to him.

When asked about the crime, he begins talking about his role as an agent for entertainment stars and that he was going to the mall to sign a contract with a talent. He was, according to Mr. Edwards, going to meet him in the mall in the morning and when this individual did not appear he became distraught. He reports that he was feeling ashamed. He reports that he was going to use money from this contract to pay off his sister's debts. He reports that he does not remember stealing the shoes. It is interesting to note in some previous records, that this patient had some obsession with shoes, incidentally. He reports that he had purchased some other things at another store with his girlfriend's credit card, although this is again confusing because he previously indicated that he had broken up with his girlfriend. He indicates that he remembers next people jumping on him and he thought it was related to the fact somehow that this famous artist had not shown up at the store. He remembers saying, "please let us get out of this busy street." Interestingly, he said the feeling or emotion was like "I was a virgin and the heat and I couldn't see." He reports that he was blanking in and out and at this time when the crime was occurring he felt as if he saw only black. He said, "I hated that I was out of

control – a third party saying to myself – Ahmad, what are you doing." He said everything thereafter was "in slow motion." He also reports some out-of-body experiences, in particular after the pedestrian accident, and he endorses some olfactory hallucinations, although again the reliability of this report is unknown.

On examination, this patient demonstrated very good persistence and put forth a good effort. He seemed to comprehend directions. His mood was appropriate and in fact was outgoing and friendly. A valid determination of his neuropsychological status was obtained.

<<written>> tests green

This patient was given the Reitan-Klove Sensory Perceptual Examination, the Finger Tapping Test, the Grooved Pegboard Test, the Controlled Oral Word Association Test, the Aphasia Screening Test, the Paced Auditory Serial Addition Test, the California Verbal Learning Test, the Rey Complex Figure Test, the Ward Short Form of the Wechsler Adult Intelligence Scale – R, the Wide Range Achievement Test-3, the Wisconsin Card Sorting Test, the Stroop Test, and the Minnesota Multiphasic Personality Inventory-2 as well as the Millon Clinical Multiaxial Inventory – 3.

On measures of gross motor speed of the upper extremities, it is noted that this patient is within normal limits to slightly above average on the dominant right upper extremity as well as on the left,

nondominant upper extremity. Fine motor dexterity and coordination, however, is noted to be slightly slower than might be expected on the right upper extremity, although within normal limits. However, he was noted to be mildly impaired for the left, nondominant upper extremity.

On the Wide Range Achievement Test –3, this patient obtained a reading score of the 12th percentile or a grade score of 7, a spelling percentile of the 1st percentile or a grade level of 4, and arithmetic percentile of 2 with a grade score of 4. These are consistent with his previous academic levels of performance. On examination for sensory and perceptual functions, it is noted that he is within normal limits for tactile, auditory and visual sensory confrontation examination. Examination for aphasic symptomatology is within normal limits. He did have some significant difficulties with mental calculations. Generative phonemic naming is noted to be at the 89th percentile. On the Wechsler Adult Intelligence Scale – Revised, he obtained a Verbal Intelligence Quotient of 88. This places him at the low end of the average range. On the Wechsler Adult Intelligence Scale – Revised he obtained a Performance Intelligence Quotient of 99. This resulted in a Full Scale Intelligence Quotient of 91.

On examination for attention and concentration functions, he is within normal limits for short-term auditory attention span. His general cognitive speeds are intact, although it is noted that he is extremely impulsive with an inability to inhibit prepotent responses. This would seem to represent a disinhibition and an inability to maintain cognitive set. Consistent with this finding, he had significant

difficulties and was markedly impaired on a measure of his ability to serially add digits under the constraints of time. His performance in this respect was markedly and severely impaired. On measures of cognitive flexibility that are less sensitive, he falls into the lower end of the average range which is probably consistent with his premorbid level of intellectual functioning. On measures of memory, it is noted that he is at the 81st percentile for immediate recall of short paragraph-length material read to him auditorially and at the 84th percentile for delayed recall. Similarly, his immediate visual memory is at the 90th percentile and at the 89th percentile for delayed recall. When given a task of new verbal learning in the form of a 16-word list to recall over five trials, he was ultimately able to acquire 14 out of 16 in immediate recall, but he also began significantly perseverating. He was not aware that he was perseverating. On immediate recall he was able to retain 14 of the items that he had learned, and on long delay free recall he was able to retain 12. He still showed some mild propensity towards perseveration. Cueing did not facilitate his recall and interestingly recognition memory was perhaps mildly impaired. On a more complex task of spatial learning and memory, it is noted that his immediate recall was at the 65th percentile and his 20-minute delayed recall was at the 65th percentile. On a measure of ability to generate hypotheses to solve novel problems, it is again noted that he is perseverative and had some difficulty maintaining cognitive set.

This patient was given the Minnesota Multiphasic Personality Inventory – 2 as well as the Millon Clinical Multiaxial Inventory – 3. On both of these inventories he demonstrated a "fake good" profile

where he denied any kind of psychological difficulties whatsoever. Therefore, these inventories were not helpful with clinical diagnosis.

SUMMARY AND RECOMMENDATIONS:

1. The results of the neuropsychological examination point towards a patient who clearly has a compromise of brain functions. He has decreased motor speed on the left upper extremity for fine motor dexterity and coordination and he is extraordinarily impulsive, disinhibited and has impairments of his ability to maintain cognitive set. He has difficulties learning new cognitive strategies and is extremely slow in this respect. He is perseverative on a variety of measures, again demonstrating his impairment of cognitive set. These findings are consistent for patients who have frontal lobe injuries, particularly orbital and mesial surfaces of the frontal lobes.

2. He clearly presents with a delusional disorder, grandiose type. He does appear to be hypergraphic, and he does endorse olfactory hallucinations, so it might be important to rule out partial complex seizures.

3. As noted from clinical interview, this patient is extremely tangential and decompensates in the course of a conversation. He is going to have considerable difficulty participating in his legal defense. These are neurobehavioral changes that are seen with frontal lobe brain damage. Additionally, I suspect this patient also has a

major thought disorder, such as schizophrenia, and it should be noted that he has a very strong family history in this regard. Additional psychological testing is required to make this differential diagnosis.

4. This patient clearly needs neuropsychiatric treatment that should be inpatient. He needs pharmacological treatment as well as group psychotherapy to help with his behavioral disturbances. Clearly the penal system does not provide this kind of intervention and he is likely to at least not benefit from incarceration and probably will deteriorate.

5. With respect to the crime for which he has been arrested, it would appear that his behavior reflects the effects of frontal lobe brain damage, including impulsivity with decision-making. It is also obvious that he was under a great deal of stress at the time this offense occurred, and it seems likely that he was psychotic at the time of the offense secondary to the interactive effects between frontal lobe damage and significant environmental stress. He uses his delusional system to cope with profound feelings of inadequacy, and his very strong family history of psychiatric illness certainly provides for a predisposition towards a major psychiatric illness that is now made even worse by frontal lobe dyscontrol.

Thank you for asking me to evaluate this most complex patient.

/s/ Lance E. Trexler, Ph.D.
Lance E. Trexler, Ph.D., H.S.P.P.

Clinical Neuropsychologist,
Director of Neuropsychological Services and
Clinical Assistant Professor;
Clinical Director,
Center for Neurological Rehabilitation
Community Hospitals Indianapolis

DWIGHT WILLIAM SCHUSTER M.D.

1016 TUCKAHOE

INDIANAPOLIS, INDIANA 46260

(317) 259-1584

The Honorable Gary L. Miller, Judge

Superior Court of Marion County

Criminal Division, Room Five

City-County Bldg.

Indianapolis, Indiana 46204

December 31, 1999

RE: Ahmad Edwards

Cause Number: 49G05 9907 CF 121975

Dear Judge Miller:

Pursuant to your appointment I have examined the above named defendant as to his competency to stand trial and as to his soundness of mind at the time of the alleged offense. My examination was carried out in a private room at the Marion County Jail in Indianapolis under satisfactory conditions and it was supplemented by a review of the Probable Cause Affidavit , an interview with his mother and grandmother and a review of lengthy letters written by the defendant.

The defendant was informed of the nature of the examination and he was told that his statements were not confidential. He expressed understanding of those facts and he was willing to continue with the examination. He identified himself and stated that he was 26 years of age with a birth date of January 29,

1973. He gave me his home address including the correct zip code.

Mr. Edwards went into great detail about events in July, 1999 but nothing about what happened at the Parisian's Department Store on July 12, 1999, other than to say that he did have "the shoes" when arrested. He stated that he had been apprehended by "a store detective" outside the store which caused him to react and that he shot his gun "because "he had attacked me and was hitting me". He stated that he was licensed to carry a gun because he worked in the field of law enforcement, namely, security work.

Past History and Family history given by Mr. Edwards included that his general health has been free of serious illnesses and accidents. He said his father had died in 1976 after being "mugged and shot 15 times". His mother and sister now live in Phoenix, Arizona and he alleged that his sister has "an addiction to drugs". He told me he was accepted in a magnet program in a local High School and went for three years. Then his mother moved and he decided to get a GED. He did not give details about his time in school and what problems he might have had. He said he returned to Indianapolis in 1992 and had worked for different Security companies since then. He denied having had any mental illness or any treatment . He said he used to drink for recreation and that he had one arrest for Public Intoxication. He denied any drug problems and said he had never experimented with drugs. He gave a convoluted accounting of his arrest in July, 1998 for Criminal Trespassing and said he thought he should have been placed on Probation so that he would have had a mentor, "some one mature to relate to". He reported

that he was not receiving medicine in Jail although he did receive pain medicine after being shot in the leg on July 12, 1999.

Mental Status examination on December 14, 1999 revealed a well nourished and developed man who was alert, coherent and cooperative. He spoke clearly and was very polite. His thinking was organized but obsessively detailed with stilted use of words and phrases. A number of his statements were unusual and appeared grandiose. For example he said "I'm keeping a Journal (in Jail). I believe I have some solutions for the World's problems". Also he stated "my being shot by a Federal agent will keep me from participating In the Olympics in Judo". There were no bizarre delusional statements or any unusual affect as are found in Schizophrenia. His intelligence was judged to be good but hampered by what appeared to be a learning disability. This was particularly noted in reading his lengthy letters to his attorney and to the Prosecuting Attorney. They were filled with spelling and grammatical errors as well as convoluted sentence structures. Mr. Edwards displayed good understanding of Court room officials and their duties and basic concepts of a trial and its consequences. He was well oriented and did not show any gross defects in attention span and memory.

I spoke with his mother in Phoenix, Arizona who described her son as "high strung". She said he had a high IQ. but that he did have a Learning Disability. She said he had never been examined or treated for any mental illness. She said he had been turned down for Social Security Disability. She did not provide me with much detail about his family life and early development. She did say that his sister is

receiving Haldol for emotional problems and that Ahmad might have interpreted the Haldol as his sister being "addicted". I also talked with his grandmother in Indianapolis who referred me and my questions to Mr. Robert Hill, one of his attorneys.

In summary my examination of Ahmad Edwards led me to two diagnostic impressions. I believe that he does have a mixed Learning Disability classified as a Developmental Expressive Writing Disorder and Expressive Language Disorder as shown by his patterns of using erroneous and inappropriate sentences both verbally and in writing, but more marked in writing. A second diagnosis is that of Delusional disorder, Grandiose type. This condition is manifested by the individual believing he or she has great, but undiscovered talents with delusions of inflated worth, power and knowledge. These delusions are not bizarre and in general the individual does not show disorganization of personality. These conditions may make it difficult for Mr. Edwards to communicate satisfactorily with his attorney, but he does know he is charged with a crime and he understands the legal procedures associated with his trial. His delusional disorder impairs his judgment such as in his selection of Security work and carrying a gun.

I believe Mr. Edwards is in need of psychiatric treatment although his condition is difficult to treat He is potentially dangerous to others.

OPINION:

As a result of my examination it is my opinion with reasonable medical certainty that Ahmad Edwards is competent to stand trial at this time. I believe he was of unsound mind, in the legal sense of that term, on or about July 12, 1999 in that he was suffering from a mental disease which impaired his appreciation of the wrongfulness of his conduct.

Sincerely,
/s/ Dwight W. Schuster
Dwight W. Schuster M.D.

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE SUPERIOR COURT OF MARION COUNTY
CRIMINAL DIVISION, ROOM FIVE
THE HONORABLE GRANT HAWKINS, JUDGE

STATE OF INDIANA)
)
VS) CAUSE NO.
) 49G059907CF121975
AHMAD EDWARDS)

COMPETENCY HEARING
(MARCH 20, 2002)

APPEARANCES:
FOR THE STATE: Mr. Don Pitzer
Deputy Prosecutor

FOR THE DEFENSE: Mr. Robert Hill,
Mr. Mark Jones
Counsel for the Defendant

DEFENDANT IN PERSON

Bobbie Belden, Court Reporter
Marion Superior Court
Criminal Division Five

* * *

[7]

THE COURT: All right then. I see we have a report from Family and Social Services from March of 2001.

MR. JONES: That's when he was certified competent.

THE COURT: I understand. Which, I guess in terms of process, is our starting point for now. I'm suspecting that primarily we want to hear information from the health-care professionals regarding his competency since that date in the alternative unless you are trying to say that Family and Social Services is wrong in their diagnosis in the first place.

MR. HILL: I don't think they made a diagnosis. I think their conclusion –

THE COURT: Well, I'm sorry. Not in their diagnosis but in their conclusion about competency.

[8]

MR. HILL: I think they were wrong.

* * *

[10]

WHEREUPON, THE WITNESS WAS SWORN BY THE COURT.

DWIGHT SCHUSTER,

a witness, called on behalf of the Plaintiff, who, after first being sworn to testify the truth, testified as follows, to-wit:

THE COURT: Please have a seat, sir. State your full name and spell your last name for the court reporter.

THE WITNESS: Dr. Dwight Schuster,

S-C-H-U-S-T-E-R.

* * *

[11]

THE COURT: Thank you. Dr. Schuster, on at least one occasion as a result of this Court's request, did you examine or have conversation with or examine records relating to Mr. Ahmad Edwards?

THE WITNESS: Yes, sir, I did.

THE COURT: On how many occasions have you done that, sir?

THE WITNESS: I've examined him twice.

THE COURT: Did either of those examinations occur after March of 2001?

THE WITNESS: Yes. The last one. [12] I'm sorry. December? No. I examined him on September –

THE COURT: March of 2001?

THE WITNESS: September 20th of 2001.

THE COURT: Okay. I don't – we're getting kind of crowded in here. The regular Court Five calendar is going to occur in the

courtroom if that's what anyone is here for. Doctor, of what did your examination consist?

THE WITNESS: The examination consisted of interviewing and observing Mr. Edwards to eliciting history of his present condition and his past history with particular reference to what had happened since I had examined him in 1999. I then carried out a mental status evaluation and reviewed the reports that I had received from Logansport Hospital where he told me he had been at Logansport. I reviewed the records there in addition to other records which had been supplied to me.

THE COURT: Thank you, sir. As a result of your interview with him, your – the [13] survey you conducted on him and your review of records pertaining to his treatment at Logansport and other materials provided to you, were you able to come up with a conclusion regarding his competency to stand trial in this matter?

THE WITNESS: Yes, I was.

THE COURT: And what is that conclusion, sir?

THE WITNESS: It is my opinion that he is competent to stand trial.

THE COURT: Okay. And just for the record, sir, what attributes must someone have in your mind to be competent to stand trial?

THE WITNESS: He must have understanding that he is charged with a crime. He must have understanding – a common

understanding of the legal proceedings thereon. In other words, the roles of the various personnel involved in the trial, purpose of a trial and general – as I say, common knowledge in terms of his role, his position in a trial. The [14] third area is his ability to communicate and assist his attorney in his own defense.

THE COURT: Is there a degree of ability or effectiveness which a person must exhibit in terms of helping his or her counsel?

THE WITNESS: Well, in my opinion, if the individual is able to communicate with me in sufficient clarity that I understand what he is saying, that he is able to answer my questions sufficiently and to demonstrate that he is aware of the three elements that I previously mentioned, I think that is my determination in regards to the degree.

THE COURT: Thank you very much, sir. Mr. Hill, do you have questions, sir?

MR. HILL: I do.

CROSS EXAMINATION

QUESTIONS BY MR. HILL:

Q You – in your original report, you indicated you thought he was not responsible at the time of the offense, [15] is that correct?

A At the time of the offense, yes.

Q Is that still your opinion?

A No. It's changed since that time because on this last examination, Mr. Edwards was much more alert, coherent and was able to talk in great detail giving all the details of the events which occurred so that my opinion changed.

Q In your original report, you said that he has a delusional disorder?

A Yes.

Q Grandiose, I think?

A Yes. I thought he did have it.

Q Do you still feel that way?

A He didn't show any indications of that when I examined him last September.

Q Did you see any evidence of Schizophrenia?

A No.

Q Okay. Did you see any evidence of any distorted thinking or disjointed thoughts?

A Yes, I did.

[16]

Q Okay. Did you see any evidence of disjointed speech patterns?

A Some, yes.

* * *

[24]

THE DEFENDANT: Your Honor, out of all due respect, Your Majesty, I –

THE COURT: Hold on, sir.

THE DEFENDANT: Your Majesty, I –

THE COURT: Mr. Edwards, hold on.

THE DEFENDANT: True.

THE COURT: There's a process for you to become co-counsel and you really haven't followed that process yet. So right now only your attorney can speak for you. [25] So what you might want to do is bump him on the elbow or write him a note when you want to be heard instead of just speaking out.

MR. HILL: Let the record reflect he just grabbed my elbow.

THE DEFENDANT: Can I speak to him for a second?

MR. HILL: I want to thank the Court for that.

THE DEFENDANT: Can I speak to him for a brief second?

THE COURT: Let's do things kind of one stage at a time, Mr. Edwards. Let's let him – let's let your client – your attorney finish talking to the doctor.

* * *

[27]

THE DEFENDANT: Excuse me?

MR. HILL: You want me to ask him if he has a license to practice medicine. We've already stipulated to that.

THE DEFENDANT: I'm asking you. Do you have a license?

MR. HILL: Do I?

THE DEFENDANT: Yeah.

MR. HILL: No, I don't. I don't have one.

THE DEFENDANT: (UNINTELLIGIBLE) object to that question.

MR. HILL: My client wanted to know if I had a medical degree, Your Honor.

THE COURT: Everybody who knows him will tell you he doesn't.

MR. HILL: I don't.

* * *

[36]

Q You described his thought process as long-winded or speech process as long-winded? He talks a lot?

A Yes.

Q It doesn't always make sense and doesn't always hold together?

A Well, in regard to the first examination that was true. On the second examination, he was much different.

Q Okay.

A Markedly different in the sense that his thought processes were not loose at that time. They were very organized, goal directed and certainly did not show indication of delusional ideation.

Q Okay. You wouldn't say that he was malingering then?

A I would say –

Q Would or would not say?

A I did not say. I did not – I just had noted that he was much different, that he was mentally clear.

[37]

Q Well, let me rephrase the question. He wasn't faking as if he was insane?

A On the –

Q Second examination.

A – second examination, I did not find indication of any faking.

Q And if you were to review letters that he has written to the Court or pleadings that he's filed with the Court that were – have disjointed thoughts, unclear thoughts, don't make a lot of sense, would that have any impact on your opinion?

MR. PITZER: Judge, I'm going to object to the form of the question. Whether or not they contain unclear thoughts is a conclusion.

THE COURT: I'll sustain the objection.

Q If the Court – if you reviewed letters where the Court thought or another expert thought that they contained unclear thoughts and disjointed thoughts, would that have any impact on your decision?

A The best way I can answer that is it [38] appears to me that Mr. Edwards does fluctuate in his presentation; that he certainly has the ability to be very clear and direct and so forth

and at other times that he is more disorganized and has more indication of what I had indicated in the first examination of his having a type of learning disability.

* * *

[51]

CROSS EXAMINATION

QUESTIONS BY MR. PITZER:

* * *

[53]

Q When you asked him questions at the second interview, did he give you any indication – I am referring to your report – as to whether or not he was seeming to do better with his, I guess, [54] physical and mental condition? Did he say he was feeling better?

A I don't know that he used that expression specifically. He did indicate that he felt that he had a problem and that he thought that he needed to be in the hospital for a long time. And he said maybe a year.

Q Did he indicate that he knew Mr. Jones to be one of his lawyers?

A Yes. He gave me his name.

Q Did he indicate that he was able to communicate with his lawyer who he believed to be Mr. Jones? I'm referring to page two of your report.

A Yes.

Q In the third paragraph you indicate that on that examination he appeared to be alert, coherent and cooperative, is that correct?

A Yes.

Q His thinking and speech was more organized than when you had seen him before?

A Yes.

[55]

Q And you did not detect any of the grandiose statements and ideas which he had expressed previously, is that correct?

A Correct.

Q Following up on that, you indicate he was well aware of the situation and the possibility that he might be found guilty and given a long sentence. Is that accurate?

A Yes.

Q So he indicated that he – according to you, knew the difference between being found guilty and being found not guilty in a criminal proceeding?

A Yes.

Q He understood that if you were found guilty in a criminal proceeding you could be given a sentence or a term of imprisonment. Is that accurate?

A Yes.

Q He also seemed to be, according to your report, having decent memory for both recent and past events and he was able to give detailed

accounts of the events [56] leading to his arrest as well as events in the recent past that he had had in jail. Is that accurate?

A Yes.

Q You didn't elicit any delusional ideas and hallucinations, his mood and affect were appropriate for the content of his thought in a situation, correct?

A Yes.

Q You don't appear to indicate that he is mentally retardeded in any way, is that correct?

A Not mental retarded. I think that he's had a learning disability.

Q Would you say that his intelligence is well within the average range?

A Yes.

Q You indicated that he had shown marked improvement since your first examination, is that correct?

A Yes.

Q An that he shows good comprehension of the charges, correct?

A Yes.

Q The legal proceedings and he [57] demonstrated the ability to communicate so that he could assist his own attorney in his own defense, is that correct?

A Yes.

Q He understood at least his own opinion of what took place of the events on the date of the offense that he's charged with, is that correct?

A Yes.

Q And you believe that he's currently competent to stand trial, is that correct?

A Yes.

MR. PITZER: Thank you, Judge.

* * *

[59]

WHEREUPON, THE WITNESS WAS SWORN BY THE COURT.

NED MASBAUM,

a witness, called on behalf of the Defendant, who, after first being sworn to testify the truth, testified as follows, to-wit:

THE COURT: Please have a seat, sir. State your full name and spell your last name for the Court.

THE WITNESS: Dr. Ned Masbaum, M-A-S-B-A-U-M.

* * *

[60]

THE COURT: And as a result of those examinations and the examination of other records, were you able to come up with a conclusion regarding his competency to stand trial in this cause at this time?

[61]

THE WITNESS: Yes, Your Honor.

THE COURT: And what is that conclusion, sir?

THE WITNESS: It's my opinion based on reasonable medical certainty that in spite of his mental disorder he does have comprehension sufficient to understand the nature of these proceedings. He is able in spite of his disorder to aid his attorney in his defense.

* * *

CROSS EXAMINATION

QUESTIONS BY MR. HILL:

* * *

[69]

Q Information from a mental health professional describing delusional thought processes while in a hospital, incarcerated at Logansport in the state hospital there, would that be of importance to you?

A Well, I diagnosed him with a delusional disorder. I don't disagree with the fact that he has a delusional disorder.

Q Can a delusional disorder impact his ability to assist his attorney?

[70]

A In this case, it is not impacting his ability.

Q My question was can it?

A In a hypothetical situation in a very disturbed individual with a disorder, it could. Yes.

Q Describe how that process would work.

A Well, if an individual is totally preoccupied with his delusions that he cannot look at the issues, the charges, and have an understanding of what's going on and be able to assist you, then it could impact situations but it doesn't apply in this situation.

Q Okay. Now you've not witnessed our inter – my interactions or Mr. Jones' interactions with Mr. Edwards, have you?

A Only here in the courtroom.

Q Only here in the courtroom. You've not – this stack of 12 inches or whatever it is high of papers that Mr. Edwards carries around, you've not read through that?

A No, I haven't.

Q Okay. Or his – these notes he's [71] trying to pass to me.

A THE DEFENDANT: Actually, I have a plea here that I would like for you to read if you would like to test the – whatever it may be, Doctor.

MR. HILL: For a bifurcated trial?

THE DEFENDANT: Yes. I beg your pardon?

MR. HILL: You have a plea for a bifurcated trial. That's what that document says. Have you –

THE DEFENDANT: Counts –

Q Have you read that document, Doctor?

A I don't believe so. I've read a lot of his writings.

Q Would you agree his writings are disjointed:

A They're rambling.

Q The – one thought doesn't always clearly lead into the next thought?

A At times; however, they seem to follow a certain process. He's trying to make a point. He's trying to make legal points. They're goal directed with his filings and motions to the Court and all. There's a certain method in all of [72] this.

Q And you see that he has a method in, for example, writing a document – I'm picking one at random – that talks about a bifurcated trial. It talks about statements by the product of the defense directly. "Tantamount, paramount in this criminal trial." I mean –

THE DEFENDANT: Your Honor, could – Judge?

THE COURT: Mr. Edwards –

Q Do those thoughts seem to be directed towards any goal?

A Yes. I think they're all directed towards a goal.

Q What's his goal?

A Well, he's – in simplest terms it's a big smoke screen.

Q You think he's faking?

A Well, I think he's creating a lot of diversions here and he's overwhelming the system by all of this and very capable of this.

Q Okay. The entries in the Logansport [73] record from various mental health professionals where they describe his delusional thought process, do you have any reason to doubt those entries?

A I think he does have delusional disorder. I don't doubt that he's delusional.

* * *

[88]

CROSS EXAMINATION

QUESTIONS BY RM. PITZER:

Q You did your second evaluation, I'm sorry, on October 3rd, is that correct?

A Yes.

Q And that was in the jail?

A Yes.

* * *

[90]

Q When you met with him on October 3rd you indicated he was not being treated with any psychotropic medication, is that correct?

A Yes.

Q What would psychotropic medication be used for?

A It's used for mental illness in the generalist term.

Q Would it be used for somebody who has Schizophrenia?

A Yes.

Q He was not receiving psychotropic medication when you met with him in the jail on October 3rd, is that correct?

A Yes.

Q Referring to your report under Mental Status Examination you indicated that he was alert and reasonably cooperative when you talked to him, is that correct?

A Yes.

[91]

Q He was less hyperactive than the prior exam?

A Yes.

Q He was also less grandiose?

A Yes.

Q You indicated that his speech was not disorganized, is that correct?

A Yes.

Q And that he had no delusions nor hallucinations when you spoke with him on October 3rd?

A Yes.

Q You indicated that he was oriented, is that accurate?

A Yes.

Q And his memory for recent remote events was reasonably in tact, is that correct?

A Yes.

Q Would you have had conversation with him about the charges that he was facing?

A Yes.

Q And did he indicate that he understood what the charges were against him?

A Yes.

Q Did you discuss with him whether these [92] were serious or not so serious charges?

A Yes.

Q And did he give any indication with regard to that?

A Yes.

Q What was that?

A That they were serious and he – his understanding was that he could receive 135 years if he was found guilty on all the charges.

Q So he understood the concept of guilt and not guilty?

A Yes.

Q He understood the concept of going to jail and serving a sentence for being found guilty?

A. Yes.

Q It was your opinion that he understands basic criminal proceedings, is that correct?

A Yes.

Q And he generally, in your opinion, understood the roles of judge, jury, witness, prosecutor and defense attorney?

[93]

A Yes.

Q Mr. Hill asked you some questions with regard to Mr. Edwards' communication with the Court and some of the thing he has written, did he not?

A Yes.

Q And you indicated that in your opinion, while they were perhaps just rambling, there tended to be some focus to what the documents said, is that accurate?

A Yes.

Q I'm going to show you what's been marked as State's Exhibit Number One which I believe by judicial notice has already been entered into the Court's record and ask you to look at that. Would that appear to be the handwriting of the type of document that you received while you were evaluating Mr. Edwards?

A Yes. This is my top document, same as the exhibit.

Q For purposes of the record, I would appreciate it if you would just read the front page of that.

THE COURT: The title or the front page?

[94]

MR. PITZER: I'm sorry?

THE COURT: The title or the front page?

MR. PITZER: I'd like for him to just reading the – starting with "Motion to Dismiss Criminal" –

A "Motion to Dismiss Criminal Charges and Discharge the Defendant on Criminal Rule 4[IC]. The Defendant, Mr. Ahmad Edwards, hereby notifies the Court and respectfully request the dismissal and discharge of the Defendant on the grounds of the following good and sufficient reasons. Continued on page two of eight."

* * *

[95]

A "[Continued page eight. Motion to Dismiss Criminal Charges and Discharge the Defendant [CR4[C]]. The Defendant [96] moves the Court of this cause to order the dismissal and discharge of the Defendant, Mr. "Ahmad Edwards" on the grounds that it is in violation of the jurisdiction of this state's constitution and laws of the criminal procedure rules. Criminal Rule 4 [C] Defendant discharged. With cooperated incorporated under the laws of the United States Constitution of America, Amendment One, Article 6."

Q Does there appear to be a signature on that document?

A Yes, there is.

Q And that appears to be a person purporting to be Ahmad Edwards, is that correct?

A Yes. That's correct.

* * *

[98]

CROSS EXAMINATION

QUESTIONS BY MR. HILL:

Q Doctor, right here, see the period? It says Defendant discharged. With –" Do you see that?

A Yes.

Q It says, "with" and you said it cooperated when you read it the first time. Isn't that word really "corporation?"

A Yes. It says "corporation."

Q And then the next word says "incorporation?"

A Yes.

Q "With a corporation incorporated?"

A "Under the laws of the united States Constitution." Yes.

MR. HILL: That's all I would have on [99] that, subject to recalling him.

* * *

[101]

THE COURT: The Court's witnesses have testified. Mr. Hill, do you have any evidence you want to present, sir?

MR. HILL: We would call Dr. Trexler.

WHEREUPON, THE WITNESS WAS SWORN BY THE COURT.

The Defendant, in order to maintain the [102] issues in its behalf, offered and introduced the following into evidence, to-wit:

LANCE TREXLER,

a witness, called on behalf of the Defendant, who, after first being sworn to testify the truth, testified as follows, to-wit:

THE COURT: Please have a seat, sir. State your full name and spell your last name for the court reporter.

THE WITNESS: Lance Emerson Trexler, T-R-E-X-L-E-R .

* * *

[103]

CROSS EXAMINATION

QUESTIONS BY MR. HILL:

and so the State would agree to stipulate that

* * *

[110]

Q Okay. In Mr. Edwards' history, do you have history of a motor vehicle accident with a head injury?

A Yes.

Q When did that occur?

A Apparently, it was September 13th of 1995.

Q And as a neuropsychologist, you would conduct tests to determine whether or not there was permanent brain impairment from such a head injury?

A Yes.

Q That's something you would do?

A Yes.

Q Did you do that sort of testing here in the neuropsychological battery?

A Yes.

[111]

Q Okay. And what were your conclusions after the testing concerning his prior head injury?

A Well, he clearly presents with cognity of impairment. As noted in the previous testimony, he does have evidence of a learning disability prior to any of this history. His reading grade level, for example, at that time, word reading – excuse me – spelling was at the first percentile. Mathematics is at the second percentile. So –

THE COURT: At what age, sir?

THE WITNESS: I'm sorry?

THE COURT: At what age?

THE WITNESS: You're asking about what the age equivalents are on those scores?

THE COURT: You said that before the head injury he was at the first percentile but that doesn't tell me if he was at first grade level or the tenth grade level.

THE WITNESS: Oh, my apologies. The way that that statistic is based is four individuals that are of that age that I [112] tested have. Ninety-nine percent of the population would have a higher reading level or spelling level than Ahmad did at the time.

THE COURT: I'm sorry. Then I misunderstood your comment because I thought you said that there is evidence of a learning disability even before the collision.

THE WITNESS: Yes. That's correct.

THE COURT: And I got the impression that the percentiles you were giving us were from before the collision.

THE WITNESS: My apologies.

THE COURT: Okay.

THE WITNESS: No. These are data gathered through the testing.

THE COURT: Thank you.

Q Okay. What other results did you determine from the – that testing?

A Mr. Edwards had signif – a very severe impairment of attention and concentration, that he was very impulsive, that as he responded to things without thinking through them and [113] that his left had had some coordination impairment.

Q Would that be consistent with a head injury?

A Yes.

Q Okay. Did you conduct any other testing of Mr. Edwards at the first phase of your evaluation?

A No.

Q Okay. You testified previously that you thought he was not competent.

A That's correct.

Q And could you review – quickly review for the judge your reasons for saying he was not competent to stand trial at the first hearing when Judge Miller was on the bench?

A It was very simply a matter – a combination of neurologic problems, of learning disabilities, and a significant psychiatric illness.

Q And would you describe that in just a little more detail, the psychiatric illness?

A At that point I felt that it was likely [114] a delusional disorder as well, consistent with the previous two witnesses and that he presented with a significant delusional disorder and that, in combination, that made it very difficult for him despite his effort to assist counsel effectively.

Q Okay. And you said there was a combination of a learning disability in some of these other deficits he has. Could you explain how the combination of factors works together to render him incomplete?

A Well, if someone has, for example, a psychiatric disturbance but in tact cognitive functions, then they can use those to help them compensate well or cope with the psychiatric problems to an extent any way and vice versa but when you have a combination of those factors, they're not just additive, they're multiplicative. And so I think Mr. Edwards' intent is he genuinely wants to help but the illness and the injuries that he presents with very much impair [115] his ability to organize his behavior.

Q You've seen this stack of papers?

A Yes.

Q Have you – has he shared any of his writings?

A Mr. Edwards has shared his – every time I have asked him for his writings he has given them to me.

Q We're going to go through some specifics here, but in general would you classify those writings? How would you classify them? Are they logical, illogical, do they hold together, are they inconsistent, what? How would you describe them?

A They are very disorganized and incoherent.

Q Okay. Some of the writings are about his case?

A Yes.

Q Some of the writings are about another plan or plans he has to –

A Yes.

Q Do any of them seem realistic?

A No.

[116]

Q Do they seem – do they seem to relate to the reality of his current circumstance?

A No.

Q And this was the circumstance at the first – when you first testified, is that – have we summarized that succinctly?

A Yes.

Q Okay. He goes away to Logansport and comes back and then you've seen him since he's been back, is that right?

A That's correct.

Q Have you reviewed the same records I sent to Dr. Masbaum, these notes?

A Yes.

Q Have you reviewed Dr. Berger's report?

A Yes.

Q Have you also since then conducted interviews with Mr. Edwards?

A I conducted interviews and additional testing with Mr. Edwards.

Q Okay. Let's talk about the additional testing for a minute if we could. What additional testing did you conduct with [117] Mr. Edwards?

A On the 27th of December, as I previously mentioned, I did the Word Memory Test which is a measure of malingering and I also did the Rorschach Ink Bloc Test with him.

Q Okay. And to rehash briefly, the Word Memory Test indicates to you he is not malingering?

A That's correct.

Q He's not faking good or faking bad?

A The – that's correct.

Q Okay. So, you would say it's a valid result?

A That's correct.

Q You gave a Rorschach Test. What is a Rorschach Test? Briefly describe it.

A It is – in comparison to the other tests I was talking about which are objective tests, the Rorschach is subjective and you can score it but it is nonetheless somewhat more subjective and reliant on the interpretation of the psychologist. But it is a test of personality functioning in the oldest [118] sense and used to provide a more ambiguous stimulus, if you will, or a stimulus that – a situation that brings out ones psychological functioning more easily than just a standard question and answer kind of situation.

Q Okay. That test is the Ink Blot Test?

A That's correct.

Q Okay. Would you tell the judge what the results of this Rorschach test would be? Describe how it was administered. Describe what was said and what your opinion is.

A Well, I have to put a caveat in there to say that it was a very noisy and distracting environment and so I think that inhibited Mr. Edwards somewhat from feeling free to respond to the test. But certainly the findings are consistent with a formal thought disorder.

Q With a thought disorder?

A That's correct.

Q Would you explain why you say that?

A I can give you examples of the responses [119] if that would be of assistance to you.

Q Yes.

A In showing one card to Mr. Edwards his response was quote, "Looks like poultry, a riddle. It's poetic. The expressionistic part that is a riddle like a canvas bearing the paint. This can take the form of an expression of a riddle, a light form. Looks like a locust. Locust. Looks like poultry and human lungs." The next card was —

Q And that was in response to one card?

A That's correct.

Q Okay. Go ahead.

A "This is naughtic merchantry. This is extraordinary. This neptune victorious." The next card, "I am seeing mortality. I am seeing solar energy or solar mass. This is a god, a sun god praying, kneeling. This is a goddess. It's immortality. It's a goddess at war with infection. No, not infection. Affection. It's a goddess at war."

Q That was in response to another card?

[120]

A That's correct.

Q All those responses which were another card, the second set?

A That's correct.

Q Okay.

THE COURT: The second set or the second card?

MR. HILL: The second card. The second set of responses to a second card.

THE COURT: Thank you.

Q Is that right?

A Yes.

Q Did you show him another card?

A Oh, there were ten altogether.

Q Could you just go ahead and go through the responses and give us a flavor of what he was saying at the time.

A On all of the other cards:

THE COURT: That's not going to help me a whole lot. If the doctor wants to say that the responses are nonstandard, that would help me.

Q Were the responses nonstandard?

A The responses were suggestive of a formal thought disorder.

[121]

THE COURT: Thank you.

Q And there were other cards where the response was equally bizarre?

A Yes.

Q Okay. When you say a formal thought disorder, what does that mean?

A That means that Mr. Edwards at that point was having trouble differentiating reality from

non-reality from his own internal ideas and beliefs.

Q Is that something that would render him incompetent to stand trial?

A Yes.

Q Okay. Would that be something that would render him unable to communicate with Mr. Jones or with me?

A Yes.

Q You also conducted interviews with Mr. Edwards in addition to that formal testing at that time?

A That's correct.

Q Could you describe the interview?

A Sure. Mr. Edwards is always pleasant. He is, I believe, genuinely trying to cooperate. He, for example, will even [122] do things as we have seen today. He has a paper clip on a document. He took the paper clip off of the document and handed it to the sheriff. He is attentive to trying to be cooperative and solicit us.

Q Did you see him trying to organize my papers for me here earlier?

A Yes. Absolutely. That's characteristic of Mr. Edwards' behavior.

Q Something that's probably incapable of being done is organizing my stuff but he was trying to do that. Did he – how else would you describe him in that interview?

A He – he's doing his best to hold his thinking together but he has a formal thought disorder and despite his efforts, he therefore is usually incoherent and unable to hang on to one topic for longer than three to five seconds.

Q Did he talk to you about his mandation?

A I'm sorry?

Q Mandation? Not mandate but mandation.

[123]

A I believe I remember hearing that word.

Q Did he talk to you about his writings here?

A Yes. I've asked him to complete some of them.

Q Okay. Do you have examples of his writings there that cause you concern?

A Yes.

Q Okay. If you could reference these, please. Do you have the writings there?

A I have some of them, not all of them.

Q Okay. And these are writings you've reviewed in preparation for your rendering your opinion today?

A Yes.

Q Okay. And you – and before we go into that, I've shown you various writings that Mr. Edwards has filed with the Court?

A Yes.

Q Okay. As a psychologist, do you have – if you could quickly summarize what your impression

of those writing is, the ones that have been filed with the court.

[124]

A I think they're all quite consistent. I think that his written behavior is very much like his verbal behavior and that is that they are tangential and disorganized and have bizarre delusions inherent in them.

Q You've – do you – you have some documents there that you wanted to share with the Court as expression. Could you take the first one and express to the Court what was said and what your concerns are about it?

A I simply asked the – my clinical assistant to just give me a document about what his plan for his defense was and how would that be successful and he produced this document for me.

Q Okay. And that document is entitled?

A It's not entitled. It's just – yeah. There's no title.

Q Okay. What did he say in that document?

A He says, "Return. Come to see me for more cash flow because I recently zoomed an eight to six-year plan to last. Rather state such factors, I group for [125] the largest mixed complaint; to become an observer of an free agent of series where he can raise my hand as support for an team with absolutely no Indiana-In's but myself to blame for the win."

Q Okay. Now, I want to show you –

THE COURT: Do you want this marked?

MR. HILL: Yes.

(WHEREUPON, DEFENDANT'S EXHIBIT A WAS MARKED FOR IDENTIFICATION.)

Q Now, how many pages is that document?

A Eight.

Q I want to show you what I've marked as Defendant's Exhibit A and ask you if you recognize that.

A Yes. It's the document I was just referring to.

Q Is that a photocopy of the document you had him –

A Yes.

Q — reproduce for you?

A Yes.

[126]

Q And –

A No. He did not reproduce it for me. He produced it for me.

Q Produce it. I'm sorry. I had photocopied it for this purpose. This is – this include this entry halfway through which just reads "select body as the best?

A Yes.

Q And is that a true copy of the document that you have in your file that was given to you that –

A I believe it to be.

Q -- as his plan for his defense?

A That's correct.

* * *

[127]

(WHEREUPON DEFENDANT'S EXHIBIT A WAS ADMITTED INTO EVIDENCE WITHOUT OBJECTION.)

Q Now you've read just a couple of passages out of there that would seem unusual?

A Yes.

Q The document needs to be read to get the full flavor for that, would you agree?

A Yes. I mean, it's – that's simply one page of eight but it – it's representative of the overall content.

Q Okay. And your opinion then about his thoughts concerning his ability and his plan to defend himself is based on that [128] document?

A My thoughts?

Q Was it the purpose of that document for him to explain to you what his thoughts on how to defend himself would be or the best course of action?

A That's correct.

Q And your reaction to that? Does he have a – I'm sorry. Your reaction to that?

A My reaction to that is that it reflects Mr. Edwards' thought disorder and that it is a reflection of the diagnosis that he has.

Q Okay. And –

A And that he is unable to assist his counsel.

Q Now, do you agree with your original diagnosis that he has a delusional disorder?

A After completing the Rorschach and reviewing, you know, the whole clinical presentation of the situation, I feel like there was another diagnosis that's probably more applicable and that is Schizophrenia.

* * *

[131]

Q What's the diagnosis and how does it keep my client from being competent? That's my next question.

A It's Schizophrenia, disorganized type, which is characterized by disorganized behavior and disorganized speech. It [132] keeps him from being competent because he can not track and stay with proceedings and participate in it nor organize his thoughts or even provide a consistent recall of the crime and the events surrounding it. And so I think that it interferes in absolutely every way with his ability to participate in that. I think it's – I'll take the liberty to say that it's quite tragic for Mr. Edwards that he has not even had the opportunity to receive appropriate medications that might help which I find difficult to accept.

Q Okay. Let me follow up on that last part. You reviewed his record from Langsport?

A Yes.

Q You reviewed what they did with him while he was there?

A That's correct.

Q Did they offer him any treatment?

A No, nothing pharmacologic that would have been appropriate for his symptoms.

Q Okay. There are medications that are [133] routinely given by mental health professionals to treat thought disorders?

A That's correct.

Q These were not administered?

A That's correct.

Q You've reviewed the file from Logansport, his medical record?

A That's correct.

Q Did they send him to class to try to teach him what the roles of the various parties were?

A Yes.

Q Now, that class consists of going over and over what Mr. Pitzer's role would be?

A That's correct.

Q And my role, judge's role and training these individuals as to how to answer questions about those roles?

A That's correct.

Q Is that reflected in the record?

A Yes.

Q Let me ask this question. If he, in fact, has a problem that's interfering [134] with his ability to assist counsel, does attending that class do anything to correct that problem?

A No.

Q If he has a thought disorder that's impairing his ability to assist Counsel, there are treatments that would help in that regard?

A That's correct.

Q Those treatments would be, if you could briefly outline them?

A There are – very simply, there are a class of two or three different medications that would likely be rather helpful to Mr. Edwards. They're anti-psychotics. Probably the best one is Zyprexa with the fewest side effects which has – is important to use with Mr. Edwards since he does have a history of head injury and you have to be careful about what drugs you use in people with a neurologic history. So, Zyprexa would be the ideal drug of choice but he has not been – he has not received that.

[135]

Q Okay. You had occasion to meet with – after December 27th, meet with Mr. Edwards, did you not?

A That's correct.

Q How many times?

A I met with him on December 27th of 2001. I have not met with him since.

Q Well, did you see him today?

A Yeah, sure.

Q Okay.

A Sorry.

Q And you saw him before our hearing?

A Yes.

Q Did he—was he describing a brain protrusion to you?

A Yes.

Q Were you curious about this prior to your conversation with him, brain protrusion?

A I'm not sure I understand the question.

Q Did you have information about Mr. Edwards complaining about a brain protrusion before today?

A My clinical assistant saw him yesterday and expressed that and Mr. Edwards had [136] expressed that concern to her as well.

Q Okay. Did you go and try to communicate with him about this?

A Today?

Q Yes.

A Yes.

Q Tell the judge about the conversation and what that conversation means to you as a neuropsychologist.

A Mr. Edwards reported to me that he felt that he was having a brain protrusion and that it

was – and that he saw it and that it looked like veins and that it was – obviously it was stressful for him. This is a somatic delusion. That's what it's called. It's called a somatic delusion and it is going to occur whenever he is stressed, anxious or feeling threatened because that's when people have those sorts of symptoms is when he is afraid and scared. And so it's manifest as somatic delusions in this kind of disorder.

Q Okay. Would that be – how would that relate to having a thought disorder?

[137]

A It's part of a thought disorder. That's part of the Schizophrenia. The difference between Schizophrenia versus a delusional disorder is a delusional disorder is for events that could be the case; that is, like I am being followed or my spouse is cheating on me. Those could occur. The criteria for Schizophrenia are bizarre delusions. These are not common place delusions that Mr. Edwards is having. They are bizarre delusions as typified by this that we see today.

Q Like his report to you that he could see his brain protrusion?

A And feel it.

Q And feel it?

A Yes.

Q And he described how the protrusion would yank on him?

A Yes.

Q That –

A He described that it would pull on him and pull his musculature down.

Q And he was animated in describing that?

[138]

A Yes.

Q Do you think that that is further evidence of your belief that he's Schizophrenic?

A Yes.

Q If, in fact, he's Schizophrenia untreated what's the likely impact of facing the rigors of trial? Is it likely to get better or worse?

A He will deteriorate.

* * *

[139]

Q Is it clear to you that Mr. Edwards is able to assist us?

A Frankly, I don't really know that you would have to be a psychologist but it seems prima facie to me.

Q Okay.

A It seems to me that, yes, it's very clear.

Q What is clear? Is it that he's –

A That it's very clear to me that he's not able to effectively assist his counsel.

Q Okay. And your recommendation, if you were recommending treatment, would be what?

A He – when I recommended in the previous evaluation that he receive – I recommend specific treatments and I did that for a reason and that's because those are know to be beneficial in these kinds of condition. So my recommendations are still the same as they were the previous occasion

Q And if he is, in fact, treated with drugs like the one you referenced or that class of medicine, is it likely he would respond?

A Sure. He would respond. It's not going to go away, the underlying illness or disorder, but he would certainly have a much better chance for him to be able to collaborate with counsel, let alone relieve the issue of the quality of his life aside.

[141]

Q It's not the purpose of this hearing but you, too, as Dr. Schuster did, have an opinion as to whether or not he could sort right from wrong at the time of this offense and whether or not he was of sound mind at the time of this offense.

A Mixed-type Schizophrenia does not go away and so he has had that since adolescence. So he was – had that condition at the time the crime occurred.

Q Okay. You also reviewed some family history?

A Yes.

Q His family history is consistent or inconsistent with your opinion?

A It's consistent with my opinion. He has a family history of Schizophrenia. How pervasive, I'm not sure but I know there are several members that have been diagnosed with it.

Q And is that something that's important to people in your field to understand and learn?

[142]

A Sure. It's a risk factor.

Q Likewise, is it important if you have medical records to review those records and find out what mental health professionals, whether they be social workers, nurses, orderlies, whomever, what they are saying about the patient?

A That's correct.

MR. HILL: Hang on one second. That's all the questions I have, Judge.

THE COURT: Mr. Pitzer, if you don't mind, could I ask some questions before you begin your cross?

MR. PITZER: Yes, Judge.

THE COURT: Doctor, in my prior life I had occasion to talk with mental health experts on these very same types of issues with an eye towards competency and sanity, luckily for a client rather than myself usually. It occurred to me that some doctors had placed the bar different places in terms of how aware a person had to be in order to be competent and I need to have an idea of your framework because I'm

not as [143] familiar with you and your work as I am with Doctors Masbaum and Schuster. First, can a person suffering a delusional disorder be competent to stand trial?

THE WITNESS: Yes.

THE COURT: Okay. Can a person suffering disorganized Schizophrenia – and I'm not sure if I said it the right way – but can that person be competent to assist his or her counsel?

THE WITNESS: Yes. It's – yes. It's a little less likely but yes.

THE COURT: When you were indicating that Mr. Edwards was a poor historian, is he a poor historian or an inconsistent historian?

THE WITNESS: Excellent question. He is an inconsistent historian and a poor historian. Some information he –

THE COURT: Let me expand on the question then.

THE WITNESS: Okay.

THE COURT: Some poor historians simply can't remember facts. They're not smart [144] enough to or they weren't aware during the events, that sort of thing. Some inconsistent historians don't have a grasp of all of the same facts all of the time. They might remember certain events at one time, certain events at another time. They're never being untruthful but they sometimes don't have the entire package together at one time. Where are we in terms of Mr. Edwards' ability to be a historian?

THE WITNESS: Mr. Edwards is very much the latter case that you articulated.

THE COURT: Okay. Is there, in your mind, any doubt now that by virtue of this force feeding of the judicial system he does understand the roles of the players?

THE WITNESS: Yes. I believe he can recite those.

THE COURT: Understanding is a matter of degree and depth sometimes but he could pass the test?

THE WITNESS: That's correct.

THE COURT: Okay. So a lot of your [145] comments are qualitated rather than quanitated. He could pass the test but the depth of his understanding is really at issue?

THE WITNESS: And his ability to use that information to his or his counsels' benefit.

THE COURT: Okay. Thank you. Proceed with the cross unless – Did I inspire a lot of questions in you that we should resolve before Mr. Pitzer starts cross or just wait for you to do redirect?

MR. HILL: I don't think so, Judge.

THE COURT: Mr. Pitzer?

MR. PITZER: Thank you.

CROSS EXAMINATION

QUESTIONS BY MR. PITZER:

* * *

[149]

Q Doctor, I was asking you whether or not his reading score indicates that he has a seventh grade reading ability?

A Yes. A grade level, yes, of seventh grade.

Q And his spelling grade level is of [150] fourth grade?

A Yes.

Q Mathematical grade of a fourth grader?

A That's correct.

Q You indicated that his sensory and perceptual functions were noted within the normal limits for tactile, auditory and visual sensory confrontation examination?

A Yes.

Q So he touches things and understands what he's touching?

A Not quite that sophisticated. That's simply a test of whether you feel light stimulus to your fingerprints, that you see visual stimuli or that your hear very simple auditory stimuli. It's not even perception or discrimination. It's really just for recognition, that you recognize that you're being touched or you recognize that there's something – that you're seeing something.

Q You said that he had a verbal intelligence quotient on the Wechsler of 88?

[151]

A Yes.

Q And that would put him, albeit in the low end, it would put him the average range, is that accurate?

A That's correct.

Q And you indicated that you believed his IQ to be 91?

A That's correct.

Q Is that an average IQ?

A Yes.

Q You indicated and Mr. Hill asked you some questions about his ability to recall and so forth and so on. You indicated that he does have an attention and concentration function within normal limits for short-term auditory information?

A Yes.

Q So when he hears things, he has a normal ability to be able to remember what was said to him and recall it later?

A If it's very simple. These are just digits that's being read to him. You know, a series of digits of five, three, eight. He can hold that in store and [152] repeat it back within normal limits.

Q Would you have – you've read a lot of the documents that he's prepared?

A Uh-huh.

Q Would you say that he has at least an average vocabulary?

A I think his – No, I wouldn't. I would say that his – that he has many neologisms – what are

called neologisms in there which are non-words and I think that many of the words are simple – pretty basic, simple words, the ones that are accurate. So, I think it's consistent with his reading level of about the seventh grade. Yeah.

Q Do you think disqualification is a word that's an average person?

A Well, I think maybe or maybe not. We can debate that. But I think the overriding issue is that I'm not sure he always knows the meanings of the words that he is using.

Q Do you think average people sometimes don't know the meaning of the words they're using?

[153]

A I don't know. I've never researched that issue. I don't know that I can answer that.

Q You wouldn't have an opinion as to whether or not average people sometimes use words when they really couldn't give you a definition of the word?

A Periodically perhaps, I suppose.

Q You indicated that his cognitive flexibility falls into the lower end again of the average range on your third paragraph of page four.

A I'm not sure which line you're referring to. I'm sorry.

Q I've got it as –

A Oh, yeah. I got it. I found it.

Q Is that accurate?

A Yes.

Q And you indicated with regard to his memory that he was in the 81st percentile for immediate recall. Is that 81st percentile for all people?

A Yes. He did very well on that test.

Q And 84th percentile, even higher, for delayed recall?

[154]

[154]

A That's recall.

Q So, do you think – do you have an opinion as to whether or not he has – in fact his visual memory is the – it looks like 90th percentile and 89th percentile for delayed recall?

A That's correct.

Q So very, very high. Would you agree?

A That's correct. Absolutely.

Q And this has to do with his ability to remember?

A That's correct.

Q And you did some tests to find that out, correct?

A Yes.

Q But yet you indicated that he – one of the reasons he has an inability to help his attorneys is because he can't remember what took place on the day that he's charged with the crime?

A No. I said that he gives inconsistent reports about what happened on the day of the crime.

Q Is it not possible that he's simply lying about his memory of the day of the [155] crime?

A I don't believe so.

Q It's not possible that he's simply lying?

A Of course it's possible.

Q So the answer is yes, it is possible that he's simply lying about what took place on the day of the events?

A It is possible.

Q He's got a pretty good darn memory based on your tests?

A He has – under those conditions, he can remember both verbal and visual information quite accurately for at least 20 minutes.

Q He knows who he is, does he not?

A Yes.

Q He knows what his birth date is?

A Yes.

Q He knows that he has family members?

A Yes.

Q Does he know where he lives?

A I don't know that I've asked that question.

Q Do you have any reason to believe that [156] he does not have also long-term memory?

A Oh, I think he does have preservation of some long-term memory.

Q Do you believe that he knows that Mr. Hill is one of his lawyers?

A He knows that Mr. Hill is one of his attorneys. Yes.

Q Does he know that Mr. Jones is one of his lawyers?

A I believe so.

Q Does he believe that – do you believe that he knows that you are a psychologist who's been asked to evaluate him?

A I think he has some sense of what that's about. Yeah.

Q Do you think he understands that the man up here in the robe is the judge?

A I'm sure he understands that.

Q I mean, in fact, he's been making his own motions at times during the course of the proceeding and referring to either Your Honor or Your Majesty or whatever it is he says?

A Yes. That's correct.

[157]

Q Do you think that indicates that he understands that this is the man who is in some way the referee of the court proceedings?

A Yes.

Q Do you think that he understands that Mr. Hill, as a lawyer, has certain responsibilities associated with being a lawyer?

A I don't know if he has that down. That's a bit abstract. He may have it but I'm not sure.

Q You've seen him when he's punching on Mr. Hill's arm and asking him to say certain things to the judge?

A Yes.

Q And you've seen him write notes to Mr. Hill and asking him to say certain things to the judge?

A Yes, but I've also seen what those notes say and so they're often quite out of context and irrelevant to what's going on.

Q Is it possible that Mr. – do you think that Mr. Edwards appreciates how much [158] time he's looking at if he's convicted of this crime?

A He can state that.

Q Do you think he understands time?

A Yeah.

Q Do you think he understands the passage of a day?

A Yes.

Q A month?

A Yes.

Q A year?

A I suspect so.

Q So that if he understands that he's looking at 135 years, he probably understands that a human doesn't live that long?

A Yes.

Q You were not asked by the Court to prepare any reports or do an evaluation of Mr. Edwards, is that correct?

A No.

Q You were asked by defense counsel to do that?

A That's correct.

Q And did they also pay your fee?

[159]

A Not yet but I'm hopeful they will.

MR. PITZER: Those are all the questions I have.

MR. HILL: I do have a few.

THE COURT: I think I did too. Doctor, sometimes lawyers reserve matters for argument and we have a unique situation here. It occurs to me that no one has asked you what you mean when you say competent to stand trial. What do you mean, sir?

THE WITNESS: You know, that's a really interesting question. What I mean by that is his ability to represent and to participate in that process in a way where he can number one, comprehend and use that information in a meaningful way and then kick it back with his attorney and participate actively. And I really don't think that Mr.

Edwards gets – I mean, as this gentleman articulates, he knows the specific roles but he cannot organize his behavior in a way to give Mr. Hill information that Mr. Hill could use in his defense.

[160]

THE COURT: Assuming –

THE WITNESS: He's going to give lots and lots –

THE COURT: Assuming that information exists.

THE WITNESS: He's going to give lots and lots of information, none of which is of utility.

THE COURT: Has anyone ever had discussion with you of case law or statutory definitions of the competency threshold?

THE WITNESS: I've looked at the legal definitions for competency.

THE COURT: Looking at that definition, would you repeat it back to me in your own words? What does it mean to you?

THE WITNESS: Oh, yeah. I mean, I didn't commit it to long-term memory.

THE COURT: I understand. Just do your best.

THE WITNESS: What I understand it to mean is that the person is competent to the extent to which they can supply information or receive information in a [161] way that they

can actively participate in the process of their trial.

THE COURT: So an accused can work with counsel to receive a fair trial?

THE WITNESS: That's correct.

THE COURT: Fair representation in the criminal justice system?

THE WITNESS: That's absolutely right. If you're cognitively or emotionally or in any other way impaired to an extent that then it interferes substantially with your ability to do that, then I guess I would head that towards incompetence on a sliding scale, you know, from –

THE COURT: And sometimes talented advocates have to work a little bit harder with clients with limitations than an advocate who has a client who's not suffering his limitations?

THE WITNESS: Oh, absolutely.

THE COURT: All right then.

THE WITNESS: All the way – yes.

* * *

[164]

CROSS EXAMINATION

QUESTIONS BY MR. HILL:

Q In your opinion, no matter how hard I would work, do you think Mr. Edwards would be able to effectively assist me [165] or Mr. Jones in his own defense?

A No.

Q And that's because?

A The pervasity of his illness.

Q He is not – is he making a choice to be – to borrow a phrase from Mr. Pitzer – an ass?

A No. He is not making that choice.

Q He has a mental disease or defect?

A Yes.

Q That mental disease or defect includes either a delusional diagnosis –

A Yes.

Q – or Schizophrenic diagnosis?

A Yes.

Q But with thought disorder?

A Yes.

Q That prevents him from being able to assist?

A Yes.

Q Okay. It's not volitional?

A Absolutely not.

Q Okay.

A In fact, I think Mr. Edwards would very much prefer to feel quite otherwise [166] about himself.

Q And your objective testing indicated that?

A That's correct.

Q Mr. Pitzer also asked you the – to speculate on the possibility of whether he's lying, of course he's lying, could be, right?

A He could be.

Q Given the fact that he has been diagnosed as either having a delusional disorder or Schizophrenic disorder, do you think he is lying?

A No. I do not think he's lying.

Q And I'm talking about his ability to recall details of the facts?

A No. I do not think he's lying. In fact, his tendencies want to please others rather than to lie to them.

Q Okay. Do you – in response to questioning by Mr. Pitzer, you indicated that his writings were quite rambling?

A Yes.

(WHEREUPON, DEFENDANT'S EXHIBIT B WAS [167] MARKED FOR IDENTIFICATION.)

Q Okay. I want to show you what has been marked as Defendant's Exhibit B and ask you if you're familiar with that.

A Yes.

Q What's the title of that document?

A It's the "Instinctive Method for Glandular."

Q Is this a document where Mr. Edwards was writing his thoughts about his circumstances?

A Yes.

Q Okay. Does this document underscore your and highlight your opinion about his ability to write and communicate and think?

A Yes, it does.

Q Is this reflective of a thought disorder?

A Yes.

Q Is it also perhaps reflective of a delusional disorder?

A Yes.

MR. HILL: I'll move to admit Exhibit A [168] in 19 pages.

THE COURT: Any objection, Mr. Pitzer?

MR. PITZER: It's probably Exhibit B.

MR. HILL: B. I'm sorry.

THE COURT: Exhibit B.

* * *

(WHEREUPON, DEFENDANT'S EXHIBIT B WAS [169] ENTERED INTO EVIDENCE WITHOUT OBJECTION.)

Q And this document just underscores what you were saying about his thought disorder and his inability to communicate?

A That's correct.

Q And his rambling thoughts?

A That's correct.

Q This document doesn't need to be read carefully, does it, but it needs to be read?

A That's correct.

Q Okay. The Court asked you questions concerning your understanding of the law?

A Yes.

Q As it pertains to Mr. Edwards, does he currently – and if we look at the second prong of the competency issue, the second prong being the ability to assist issue, your opinion you've stated is he doesn't have the ability to assist?

[170]

A Yes.

Q You think he does understand the roles of the other parties as to prong one?

A Yes. I mean, he can state the roles of the people involved. Yes.

Q Do you understand he has to do – be able to do both?

A Yes.

Q Understand our roles and be able to assist counsel meaningfully?

A Yes.

Q And if he, for example, had appendicitis and was unable to assist at trial, he would not be able to go to trial at that time?

A Yes.

Q Okay. And this is an illness; it's just an illness of the brain?

A Yes.

MR. HILL: Okay. That's all the questions I think I have at this time.

* * *

[172]

MR. HILL: I may have omitted a question. I – Mr. Jones pointed out that I didn't clear something up and I may ask leave to ask an omitted question.

THE COURT: Certainly.

CROSS EXAMINATION

QUESTIONS BY MR. HILL:

Q You testified earlier as to treatment?

A Yes.

Q Do you have an opinion if he receives treatment as to whether there's a reasonable likelihood that he would remain incompetent or his competency could be restored or is it too early to tell?

A Well, I think there's certainly a reasonable chance that his functioning could improve enough that he could become competent but I can assure you that if it's not tried, he will not become competent.

Q The treatment?

[173]

A That's correct.

Q The neuroleptic treatment?

A That's correct.

Q And the medication and therapy?

A That's correct although I would not recommend neuroleptics because those are another class of anti-psychotics that he should not take but –

Q Okay.

A But the A typical anti-psychotics like Zyprexa should certainly be tried. I think Mr. Edwards might also feel much better.

Q The neuroleptics he couldn't take – shouldn't take because of his prior head injury?

A That's correct.

MR. HILL: That's all I have.

* * *

STATE'S EXHIBIT ONE

MR. AHMAD EDWARDS) IN THE MARION
) SUPERIOR
) COURT ROOM 5
v) CRIMINAL DIVISION,
THE STATE OF INDIANA) CAUSE NO:

<<stamped>> FILED MAY 29 2001 <<signature>>
Sarah M. Taylor CLERK OF THE MARION
SUPERIOR COURT

"MOTION TO DISMISS CRIMINAL CHARGES"
AND DISCHARGE THE DEFENDANT
ON CRIMINAL RULE 4 [C]

The Defendant, Mr. "Ahmad Edwards" hereby notifies the Court and respectfully request the dismissal and discharge of the Defendant on the grounds of the following good and sufficient resons.

[CONTINUED ON PAGE 2 OF 8]

[CONT – PAGE 3]

"MOTION TO DISMISS CRIMINAL CHARGES"
AND DISCHARGE THE DEFENDANT
ON C.R. 4 [C]

1] The Defendant, in this cause Mr. "Ahmad Edwards" injunctioned receiverships of the Court to determine to determine to expedite trials within this cause by the exerciseing of his right to affects thereto the United States Constitution statute of Amendment One Article Six therein states for all persons whome may be permissive in criminal

prosecutions shell enjoy the right to a speedy and public trial,

[CONTINUED ON PAGE 3 OF 8]

[CONT – PAGE 4]

"MOTION TO DISMISS CRIMINAL CHARGES"
AND DISCHARGE THE DEFENDANT
ON C.R. 4 [C]

2] Assignment for a defendant in jail extensive discretion and exercised by the defendant of this cause Mr. "Ahmad Edwards". The rules of criminal procedure Rule 4 [C] defendant discharged. No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year from the date the criminal charges, against such defendant is filed, or from the date of his arrest on such charge, whichever is later; rules of criminal procedure. Criminal Rule 4 [C] designated as initial classification by the defendant, Mr. "Ahmad Edwards" whome arrived at the Marion County jail in Indianapolis, Indiana on

[CONTINUED ON PAGE 4 OF 8]

[CONT – PAGE 5]

"MOTION TO DISMISS CRIMINAL CHARGES"
AND DISCHARGE THE DEFENDANT

ON C.R. 4 [C]

2] 07-21-99 untill 09-29-00 thereon for more than one year. For a total number [428] days in general. By written stipulation of the justice information system of Indianapolis. Awaiting trial – held for authority verdict thereon for more amended circumstances as effect by judgment, on 3-27-2001 where no continuance was had on the defendant, "Mr. Ahmad Edwards" motion, so held on recognizance for [53] added days of the courts calendar as to date 05-25-2001.

[CONTINUED ON PAGE 5 OF 8]

[CONT – PAGE 6]

"MOTION TO DISMISS CRIMINAL CHARGES"

AND DISCHARGE THE DEFENDANT

ON C.R. 4 [C]

3] Any extensive additional proceedings of law by the right of the Fourteenth Amendment of the United States Contitution witch states "no State shall make or enforce any law which shall abridge the privileges of citizens of the United States nor deprive any person of life, liberty, or property without due process of law. Witch sequenced the convenience of justice by the Federal Rules of Civil Procedure Rule 71A.[A] applicability of other rules. Such as Federal Rule of Civil Procedure Rule 83.[B] procedures when there is no controlling law. To subscribe the dismissal

[CONTINUED ON PAGE 6 OF 8]

[CONT – PAGE 7]

"MOTION TO DISMISS CRIMINAL CHARGES"

AND DISCHARGE THE DEFENDANT

ON C.R. 4 [C]

3] of the defendant, "Mr. Ahmad Edwards" exesting criminal charges and discharge the defendant from the Marion County Jail in Indianapolis Indiana at 40 South. Alabama Street. In an cell housing numbered block [4-B]. Under the gallery number [494657] as his exclusive right as the accused to a speedy and public trial, by an impartial jury of the State of Indiana which District haveing been previously ascertained by law of the Criminal Procedure Rule 4. [C] discharge for delay in criminal trials not sufficient in time to try him.

[CONTINUED ON PAGE 7 OF 8]

[CONT – PAGE 8]

"MOTION TO DISMISS CRIMINAL CHARGES"

AND DISCHARGE THE DEFENDANT

ON C.R. 4 [C]

The defendant, moves the Court of this cause to order the dismissal and the discharge of the defendant Mr. "Ahmad Edwards". on the grounds that it is in violation of the jurisdiction of this States Constitution

and laws of the criminal procedure rules. Criminal Rule 4 [C] defendant discharged. With corporation incorporated under the laws of the United States Constitution of America Amendment One Article Six.

cc:

/s/ Ahmad Edwards
Ahmad Edwards

DEFENDANT'S EXHIBIT A

Letter of Dec 20, 01

This is Ahmad's response to the question: What is your plan/defense that you feel will be successful?

Return come to see me for more cash flow because I recently zoomed an eight to six year plan to last.

Rather state such factors I group for the largest mixed complaint; to become an observer of an free agent of series where he can raise my hand as support for an team with absolutely no Indians-Ins but myself to blame for the win

Beginning tomorrow being I'm crazed with nothing todo I'm going to kill — time and become an overachiever city general in a sport just for the feeling until I can thank you for a good day "Christina Spannan", and the treatment you gave me: coaching

"Coach" – "Baby" – "Coach"

You are the precautions I need to take when I become an freshman as another traveler first class

Waite the second when I ask you to meet me from malicious will — and say only justices clearly in, Court caseing Chiefs for how I can joine the majority of the best

June 15 is when I'm celebrating an picking you to earn points now they'll read about me one day in books at ~~library~~ library's on ~~bonu~~ bonus list as the pool room power from Indy

select body as the best

Basesing new game on brariers I made Mobi

[illegible]

As [illegible] year from [illegible] broken back from book writeing will cover me however reacted with skepticism

Currently I have been writeing a book about ____ [illegible] is in a addition [illegible]

I will not take the stand as an weapon in trial on behalf of a man standing trial with collections of any day caused by madness as to an crowd that included saying "Wo" – he imposed us. And told fellows publicly "Hi – Mom".

Board members were ready to use unnecessary fee policys that covered just raised request to post my members superintendents roll call

High school student walked out of the goals they presencely felt saying "Please" with the way this man see it!

But now it's-all-over and I want to be an freshman in class myself if the judge lets me go to the Indiana Family and Social Services Administration on Logansport State Hospital civil side called "Dodds" or "C.L. Williams" or "Carson," "Central" or one of the four whome are not just going to sit back and let the rights as advocates of those in need of special learning: conditions campus serving these type of young adults seen policed hand down "Christina" the substance that make people positive is options – see they'll never, ever, know unless you diligently give to virtue for the knowledge temperance shows mindul of kindness for this world's charity to ready the great one's by and such choosing is whats right.

/s/ "OUA"
Ahmad Edwards

DEFENDANT'S EXHIBIT B

[Pages 19 p.1 of 19]

"INSTINCTIVE METHOD FOR GLANDULAR"

When an adequate supply of oxygen is not ensuring a particular regulation of blood pressure in the circulation of support, the many billions of interconnecting cells of the brains larger more dominating general cerebral; as well as the – draining resulting in ventricles full or in the filling of the central canals of witch becomes blocked of relief or cut off ..... as this should be treated with a mild sedative that will not cause embryo to form in an early pregnancy of [Ahmad Edwards Asto] futcher family plaing, As such an sedative might cause his children tobe born deformed takeing the responsible limb formation by effecting it's cortex in the thalamus as an transmission of impulses to and from a child [Mr. Ahmad Edwards] should allow descendants by helping in the giveing birth process ..... therefore the used drugs should not effect the cerebral

[p.2 of 19]

"INSTINCTIVE METHOD FOR GLANDULAR"

Solutions of Qxide witch could cause anemia cytochromes are constituents occurring naturally in the human body yet with-in "Mr. Edwards" [Ahmad] iron has become deficient as ..... Hematite [20°] rapid puls is reached with a low capacity of blood that pumps abnormaly in "Ahmad"

Previosly, recognized by doctors – an neurosis of witch caused by an auotomile crash – begain a hemorrhageing in his [Ahmad] cerebral confirming patters previous developed as social learing. Psychotherapy for fears of inappropriate everyday adult life disorders. Phobia caused the compulsive

disorder "Hysteria". of witch should receive adequate social contact and education with a minimum strategie to help the hysteria between behavior therapy as the two treatements – will benefit both degrees of learning and social competence.....

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"INSTINCTIVE METHOD FOR GLANDULAR"

Asto the neurosis conforming an unconscious conflict with-in the peripheral nervous system is the rule of the damage to his upper left forebrain which interferes with sensation of his [Mr. Edwards] nerve control of the body ..... such rule of damage has caused an infectus allergic reaction due to heavy metals, an vitamin deficiency and an organ failure .. esseentiaily in the same areas advanceing aphasia disorder in his brain represented as an learning disability of his [Mr. Ahmad Edwards] ability primari auditory recognition mode located in the dominating general cerebral

The conventional planes of brain surface apart from heart energy for motion couples with the atrium

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"INSTINCTIVE METHOD FOR GLANDULAR"

Draining of heart thus empiricaly subjecting the prevention of the brain surface to express a stable releases exaggerated by the blocking in drainage of skull in to the brains hydrocarbons atoms alkynes .... as they are used as fuels for lubricat deriving formally to or this closest mother of various branches – treatment may very well be by-standing in compounds made of aliphatic alicyclic hydrocarbons

substituting, accepting carbon's harmone in organic chemistry.

Chemically solutions according to certain rules for subtraction multipleing dividing E.C.T. [Mr. Ahmad Edwards] simply – when useing his imaginary commissions – is throwing – a – way the higher ariseing of blood from the lower hart by the brains

[p.5 of 19]

"INSTINCTIVE METHOD FOR GLANDULAR"

Unusual blood-vessel strength at the surface of cortex damage halve zone of his [Mr. Ahmad Edwards] brain. As the basal ganglia and pituitary gland. Stems the dyslexia. Represented in the development of this organic period; hormones considerably are ceased with an excess amount of hyperventiction an fertilization of iron ..... in the begaing looks like the pre-affects of his vessel of blood damage

The anxiety that is inevitable calling to attention stresses simulating. An Qygen correcting with [Fe SO^4 $7H^2O$] or green vitriol, or copperas green crystalline solid; when "iron ore" is treated; with sulfuric acid it "gains the table" – as a mild solution for one wanting results if economicly privileged to periodicly effect this disorder in response to attention –

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"INSTINCTIVE METHOD FOR GLANDULAR"

seeking behavior to stop.

Extremities of the nerves [or neuron] asto the procedure or results; at first affect the brains basic

unit nerves that or deprived. There balance and strengt is crucial in the tranpositioning of sensoryes that control predominatly the cortex, and are concerned because of the special diffusing in the forebrain, which connect small but important centers of the brain stem. As it contains it's posture of and in each hemisphere of the cerebral the motor cortex sensationaly must be assimilated for better spand of controle, due to the surface layer damge capillaries in actively are in convers of.

The reading process, assimilating written langue Mr. Edwards [Ahmad] primar

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"INSTINCTIVE METHOD FOR GLANDULAR"

Auditory phonetic component is isolated as words and, sentences when written on normal auditory levels seem tobe patterns of an disorder with [output] visual mode, the dependence on letters in words for the forming of sentences is the development of the transition of the auditory to the visual mode. Thust ~~Amad~~ Ahmads written form substantially is effected represented initially in a dyslexia that once subdivided into conception and articulation is noted associates with probably the essential acquisition of Ahmad [Mr. Edwards] comprehension disorder.

Indivisible by the surface of released thyroid hormone gland levels lowering ..... concerning particularly

[p.8 of 19]

~~9~~

"INSTINCTIVE METHOD FOR GLANDULAR"

with the exclusive phenomena that due to growth nearby pituitary optic nerves affecting the vision of Mr. Edwards [Ahmad] produceing syndromes some may be in the center brain blood releasal of hormomes causeing tumors in hypothalamus vessels consisting of several situated oxygen elements and chemical compounds of stone, rubber, metal substances from posing the atomobile to alternate in the colision in the recession of an object powerful inflicting with graphic force. closeing the now visualy seen head blow Mr. Ahmad Edwards recived from the frount seat of the driver side of the totaled-out automobile ..... by the engine reaction the reciprocating engine parts; upond impact of Mr. "Ahmad Edwards" uper forehead, very low by

[p.9 of 19]

"INSTINCTIVE METHOD FOR GLANDULAR"

The second law of gravidy about two [2] to three [3] tons can emission it's weight and term of settleing in as to the effect of bacteria pentrating the surface ~~of~~ first nervous system of neurosis impulse transference associations to deal with this interest of [Ahmad] Mr. Edwards health is now in the crucial state, that replacement therapy with thyroid hormone be diagnosised to prevent, slow responses. Usually if replacement therap has been delayed [large tongue E.C.T.] appearant speech development. Vocalization of syilables. Acquisition of verbs adjectives whers as the person that therapy has been minimized would appear as mental retarded with a low intellectual capacity arising from impairment of the brain and nervous .....

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"INSTINCTIVE METHOD FOR GLANDULAR"

Resulting in genetic defect systems. Psychosis of withdrawn behavior which mood characteristically is flat or auditory hallucinations delusions of identity, or nonlogical sequence of ideas as [his] conversation would lack substance. Witch are particularly disorders of human thought. Mr. "Ahmad Edwards" experiences of importance in school and admission socially, his [Ahmad] mental magnetism of people with high intellectual conpasties ..... showes he possess none of the border line features classified by the last stated psychosis.

Yet there is a moderation of the minimized crucial transpositioning of sensorys connected to the centers of the extensions to tendons of normal

[p.11 of 19]

"INSTINCTIVE METHOD FOR GLANDULAR"

Joints and there activity inherited physically that needs tobe examinaed. As the basis of syptoms occupationaly causeing vascular functional ~~disod~~ disorders. Deficiency of blood theoreticly could cause Mr. Edwards [Ahmad] too lose weight because of the fast becoming common regulation of his [Ahmad] phical system by witch he sweats leaving any of his [Mr. Edwards] efforts of building an healthy dayly diet that witch amounts to the proper servings of sodium dietary and protein carbohydrate and fiber as they all become saturated in calories value. His [Ahmad Edwards] nutrition needs must be percented daily as they may have tobe much higher than the basic dependance of two thousand dayly calorie intake .....

.....

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"INSTINCTIVE METHOD FOR GLANDULAR"

..... may be even higher than the dietary needs; totaling two thousand five hundred – [2500] when the diet of Mr. Ahmad Edwards reaches an deficientcy the results are nervousness, weight loss and increased rate of his heart beat leading to myxedema with an skin disorder of the lymph node [sweat gland].

Vaporing directly also is an profuse scented substance fume from the characteristic effect hyperidrosis activity is abnormaily surfaceing the skin with the resolution the secretion at a high rate evaporates the subsequent hot body temperature to cool to atmosphere leavels normal

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"INSTINCTIVE METHOD FOR GLANDULAR"

on the autonomic nervous system hypothalamus immediately revenues the orchestra, of a sour composing like fume containg the skin's vascular water between the nerves system of hyperidrosis and the inflammatory neutralitly participating with the faint discharge of vapor measureing that the fight proportionally in degree of convectional deordants Mr. "Ahmad Edwards" seems tobe loseing against the un-attracting smell people at the very least find this smell exceptable that is created by his bodyes edithelium. The disorderly fashion of the man's [Mr. Ahmad Edwards] secreteing sweat glands diagnosis on a physical examination is an ..... [or as] inflammatory disorder. Causes are certain due to the

[p.14 of 19]

"INSTINCTIVE METHOD FOR GLANDULAR"

Cularlation of blood into the internal body organs from the heart material chambers to the brains systemic analysis is not or should not be classisfied as an skin manifestation.

Energy thyroid pituitary gland cause at levels that are to low are hormone defiency in Mr. Ahmad Edward's hypothyroidism and cool dry and or puffy skin nervousness may result in iodine deficients increasing Mr. Ahmad Edwards heart rate. Oversecretion of this deficiency traumatizes certain exocrine glands which are the usual secreting materials via ducts into internal organs of the heart the epithelium of the sweat glands secrete watery fluid or perspiration and sebaceous sebum and the epithelium of internal membranes discharges outside of the lubricats that alleged protect the

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"INSTINCTIVE METHOD FOR GLANDULAR"

Surface of the skin were the most sensitive areas are connected that project the body from abnormal conditions of profuse sweating – as stress to the hypothalamus and autonomic nervous system glands activity [hyperidrosis] witch its abnormal sweating profusely conditions a excessive loss of cystic fibrosis witch and abundantly is caused by Mr. Ahmad Edwards loss of vascular legion. An diagnosis on secreteing sweat glands as to a physical examination causes are an inflammatory and due to the cularlation of blood internal organs. The heart and its materal chambers abnormailty effects the brain systemic organs; analysis for Mr. Edwards [Ahmad]

skin manifestations characteriezed as profuse sweating of the subsequent autonomic nervous system.

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"INSTINCTIVE METHOD FOR GLANDULAR"

Released thyroid hormone pituitary optic nerves exclusively are effected by need. The brain [Asto Mr. Ahmad Edwards] must produce releasal of several hypothalamus vessels so that gland levels lowering syndromes recive the proper blood.

Asto the control of muscles metal infection caused by damage to the peripheral nervous system. An antbyoutic and psychotherapy for hemorrhaging characteriezed by previous diagnosis an educational disability learning phobias of life effecting neurosis disorder ..... must receive adequate social contact helping peripheral nervous system causeing sensation conflict behavior competence consciously should restore.

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"INSTINCTIVE METHOD FOR GLANDULAR"

of a low capacity of blood thats abnormal failing in the [Mr. Ahmad Edwards] body constituent to a normal suficient amount of iron, ~~plu~~ puls an effective secondary subsequent amount. Graphicly is in need to become adequat when impulses are affected by the cortex for the needed sake of any children Mr. Ahmad Edwards may have ..... ; "avoid" any and all sedatives used to cure, that may cause embryo to expereince; congenital problems in such effects oxide when it comes discharing, in some sedatives".

STATE OF INDIANA VERSUS AHMAD EDWARDS

CAUSE NO. 49G05-9907-CF-121975

COMPETENCY HEARING – APRIL 29, 2003

HONORABLE VAN BARTEAU

MS. CRAWFORD FOR STATE

MR. HILL FOR DEFENSE

* * *

[4]

DWIGHT SCHUSTER, having been sworn to tell the truth, the whole truth and nothing but the truth now testifies in this cause as follows:

COURT QUESTIONS WITNESS

Q Doctor Schuster, first let me point out to you that the purpose of the hearing today is to determine Mr. Edwards's competency to stand trial as of right now.

A Yes, sir.

Q Not as of two years ago or a year ago or even three months. I guess the question is right now, okay? Now, you originally filed a report with this court – do you have your original report? What was the date of that, Doctor Schuster?

A Which report are you referring to?

Q Your original report that you filed in this case. That would have been back in...

A The date of the original report was December [5] 31st, 1999.

Q And what was your conclusion in that report as to the then-competency of Mr. Edwards to stand trial?

A It was my opinion at that time that he was competent to stand trial.

Q And then did you subsequently testify in a competency hearing held by the Honorable Gary Miller? Or was it just your report?

A I'm sure I probably did.

Q Okay. Doctor Schuster, you filed a later report with the court I believe, is that correct?

A Yes, sir.

Q And that was dated October 2nd, 2001, is that correct?

A That is correct.

Q And this was a re-examination of the defendant after his return from Logansport. Is that correct?

A Yes, sir.

Q And at that time in that report, which is part of the record –

[6]

THE COURT: And I assume both counsel have seen that report?

MS. CRAWFORD: Yes, Judge.

MR. HILL: Yes, sir.

Q It was your opinion that Mr. Edwards had shown a marked improvement since your original examination and that it was your opinion that with reasonable medical certainty that he was competent to stand trial for the

crimes with which he is charged. Is that correct?

A That is correct.

Q Is that still your opinion, sir?

A That is still my opinion.

THE COURT: You may cross examine, Mr. Hill.

MR. HILL: Okay.

[7]

CROSS EXAMINATION
QUESTIONS BY MR. HILL

Q Doctor Schuster, your original diagnosis of Ahmad Edwards was what?

A At that time I had two diagnostic impressions, the first he had a mixed learning disability classified as a developmental expressive writing disorder and expressive language disorder and the second diagnosis was that of delusional disorder grandiose type.

Q Okay. Now, in your second examination, did you have a diagnosis of Ahmad Edwards?

A At that time I thought that he still had a learning disability but not as evident as in December of 1999. I don't believe in my report that I put in a diagnostic impression other than just a general statement that there was nothing to suggest psychotic ideation or loss of reality.

Q Okay. Would he still have been suffering under the delusional disorder grandiose type at that time, then?

A No, I didn't find indication of it on the [8] second examination.

Q So you found no indication on, in regards to delusional disorder grandiose type on the, at the time of your second report?

A That's correct.

Q In the, from the time of your first report to the time of your second report, what had happened to Ahmad Edwards? Medically what had happened to him?

A He had been at Logansport State Hospital.

Q Okay. Did you review the records from Logansport?

A No, I, or at least I don't any copy of the reports now. I had a, I have just a, what is titled a psychological assessment, but in reality it, later on it's termed a comprehensive bio-psycho-social assessment. It wasn't, I didn't think it was truly a psychological assessment, certainly not a psychiatric evaluation.

Q Okay, so it's some sort of hybrid sort of report, would that be fair?

A Primarily sociologic.

Q Okay. And subsequent to Ahmad Edwards being, [9] back in our last hearing, have you examined him again?

A Yes, I examined him the last time December 16th, 2002.

Q And at that time did you still think he had a learning disability?

A It was not, I didn't make a diagnosis of a learning disability at that time. I think I

indicated, I said by history he does have a learning disability but I have no school records or other objective reports on it.

Q So you did not make that diagnosis again then at the time of your third report?

A No.

Q Okay. At the time of your third report, did you make any further diagnosis concerning delusion disorder grandiose type?

A I did not make such a diagnosis, no.

Q At the time of, in between your second and third report and at the time of writing your third report, were you aware of any medical intervention for Ahmad Edwards between those two time periods?

A No.

[10]

Q Okay. To the best of your knowledge, from the original time that you encountered Ahmad Edwards until present, has he been on any medication?

A Not any psychotropic-type of medications.

Q That you're aware of.

A That I'm aware of.

Q The – at the time, from your original meeting with Ahmad Edwards to the present, are you aware of any therapy that he's been through, psychiatric therapy?

A No.

Q Okay. The, have you had occasion then to meet with Ahmad Edwards on three, at three times during the course of this case?

A Yes.

Q Okay. That would be right before your first report; right before your second report; and right before your third report?

A Yes.

Q Okay. Have you had occasion to read any of the writings that Ahmad Edwards has delivered to the court?

A Back originally in 1999.

[11]

Q Okay, and was that what caused your mixed learning disability, having problems expressing himself?

A Yes.

Q I'm sorry, I know I didn't say that properly but –

A Yes, that was the basis of the diagnosis.

Q Okay. You said also he had problems communicating, not just in writing but also orally?

A Difficulty due to his obsessive, repetitive pattern at that time.

Q Okay, and that would be both oral and in written form?

A Yes, referring to 1999.

Q Yes.

A Yes.

Q Okay. At the, at the time of your most recent report, is it your understanding that Ahmad Edwards is not under any psychiatric care at

the current time or under any medications, psychiatric medications at the current time?

A That's my impression, yes.

[12]

Q Okay.

MR. HILL: That's all the questions I have.

THE COURT: Let me ask a missing thing.

COURT QUESTIONS WITNESS

Q Doctor Schuster, did you prepare a written report following your third examination?

A Yes, sir.

Q Did you submit it to the court?

A Yes, sir. Under the date of December 31st of 2002.

Q I don't see that report in the file.

MS. CRAWFORD: I have a copy of it, Judge.

MR. HILL: I have a copy as well. Is there any —

MS. CRAWFORD: December 31st, 2002?

A Yes, sir.

THE COURT: Is there any objection to my entering that into the record?

[13]

MR. HILL: Oh, no.

MS. CRAWFORD: Oh, no, Judge.

THE COURT: And I want to read it before we're done with Doctor Schuster.

MS. CRAWFORD: Judge, may I be permitted to ask a couple of questions of Doctor Schuster?

THE COURT: Sure, go ahead.

CROSS EXAMINATION
QUESTIONS BY MS. CRAWFORD

Q Morning, Doctor.

A Good morning.

Q You indicated that there, that the defendant had some problems expressing himself verbally and in written form back in 1999 and that took the form of, of, and that was the basis of your opinion for the delusional disorder diagnosis, is that correct?

A Well, the basis, more the basis for that diagnosis was his, some of his grandiose statements which appeared to be delusional in [14] content.

Q Okay, and you said that he had a learning disability and he had trouble expressing verbally and orally, and what was your diagnosis in relation to that?

A Well, that's when I made the diagnosis of developmental expressive writing disorder and expressive language disorder.

Q Okay, and what did you mean exactly by that? What do you mean by that?

A Well, that was just to be the diagnostic nomenclature given in the, in our DSM 4 (phonetic) that basically it indicated that the, he had difficulty in both writing and in speaking orally, expressing himself because of

his verbosity, his obsessive detail, repetitive nature of it, that type of expression which was coupled with a lot of grammatical and syntactal problems.

Q Did he fall into that pattern of communication during either of the second two examinations that you did of him in 2001 and 2002?

[15]

A To some degree he continued to be what I termed excessive in giving convoluted, detailed explanations of things.

Q Okay. Did you find that his falling into that same pattern was to such an extent that he was unable to communicate his ideas? That you had an absolute lack of being able to understand what he was saying?

A No, not on any of the three examinations as I, in answer to the judge I found that he was competent all three times that I examined him.

Q I noticed that each time that you talk about it, he gave an explanation of his account of what happened in July of 1999, is that right?

A Yes.

Q And was it, were you able to understand consistently what his story was each time?

A Yes, and it was very consistent.

Q Okay.

MS. CRAWFORD: I don't have any further questions. Thank you.

* * *

[17]

RECROSS EXAMINATION

QUESTIONS BY MR. HILL

Q You said he gives convoluted detailed [18] explanations of, when you start asking him questions.

A Yes.

Q And that was something that was consistent throughout his presentations to you?

A Yes.

Q Ahmad Edwards can be asked what he's charged with and he can answer that question. Would you agree with that?

A Yes.

Q Okay. And he can parrot back yes, I'm charged with crime A, crime B, crime C? Would you agree?

A Yes.

Q Okay, and if you tell him and if he's aware of what the allegation of probable cause affidavit would be, he's aware of that, he can repeat that. Would you agree with that?

A Yes.

Q Since your first examination, have you read any of the writings Ahmad has forwarded to the court?

A Um, I'm not aware of any after the original examination, they're all in 1999.

* * *

DIRECT EXAMINATION

QUESTIONS BY MR. HILL

[36]

MR. HILL: Okay, let's — may I call Doctor Coons?

THE COURT: Please do. Mr. Coons? Doctor Coons, excuse me.

PHILLIP COONS, having been sworn to tell the truth, the whole truth and nothing but the truth now testifies in this cause as follows:

Q Okay, would you state your name, please?

A It's Philip M. Coons.

Q You are a psychiatrist?

A I am.

Q That means you're a medical doctor.

* * *

[42]

Q Okay. Now, there are indicators, indications in the medical record that trained medical personnel at Logansport, social workers, psychologists, orderlies, people that work [43] with the patients there, did observe delusional behaviors and communication from Ahmad Edwards.

A Yes. I, in looking through the progress notes, I counted somewhere between eight and 12 times where the record indicated that he was still delusional or still having trouble communicating and yet that wasn't reflected in Doctor Berger's report to the court.

Q That didn't come through in the report to the court at all.

A Not at all.

Q Okay. The, it's not valid, is it, to assume that someone's been to Logansport and that they have received treatment. That's not a valid assumption, is it?

A No.

Q Would you, I mean you would hope that would occur.

A Yes.

Q But in this case it did not occur.

A That's correct.

Q And there were indications from trained medical people that there was an ongoing [44] delusional mindset here with Ahmad.

A Yes.

Q You did interview Ahmad, face-to-face?

A I did.

Q And when did you do this?

A That was November 26th of 2002.

Q Now, in, in the interview with Ahmad, this was for the purpose of determining competency?

A Correct.

Q Would you describe to the court what you want to accomplish and what you want to do in that sort of interview? Just set the scene for that kind of interview.

A In determining competency, basically what I want to do are, to do several things. One would be to take a thorough psychiatric history and come up with a psychiatric diagnosis. Number two, I want to examine the defendant particularly regarding his knowledge of the charges against him, plus his knowledge of

courtroom procedure and terminology and finally I want to come to some kind of an opinion about whether he's [45] able to cooperate with his attorney.

Q Okay. The best way to do that is through reviewing the records and then conduct the interview.

A Well, yeah. One must review the records if they're available, do a psychiatric examination and ask questions about courtroom procedures.

Q And did you conduct that sort of psychiatric examination?

A I did.

Q And did you conduct that sort of records review in this case?

A Yes.

Q You have a diagnosis of Axis I, do you know?

A Yes.

Q What is Axis I, what does that mean to lay people, what should it mean?

A Well, in psychiatric diagnoses we have five different axes and on Axis I we list the main psychiatric diagnoses.

Q Did you come to a psychiatric diagnosis in this case?

A I did.

Q Would you describe your diagnosis of Ahmad?

[46]

A Yes. My diagnosis was schizophrenia in this case. There were a couple of secondary diagnoses. He's abused alcohol and heroin and marijuana before and he also has a history of a

reading problem, but the main diagnosis that we ought to be concerned with is schizophrenia.

Q Okay. What is schizophrenia?

A Well, schizophrenia is a psychiatric disorder which is characterized by both a disturbance in thinking plus a flight from reality and generally that manifests itself with either delusions or hallucinations.

Q It's not unusual then for someone who's schizophrenic to have grandiose delusions?

A That would, would be typical of one form of schizophrenia.

Q Would it be inconsistent with someone who's schizophrenic to distort reality?

A Oh, no, somebody that's schizophrenic, when they're psychotic they always distort reality.

Q For example, if I said I had something growing out of my head, that might be a [47] distortion of reality?

A Exactly.

Q If I didn't have it actually growing out of my head.

A Yes.

Q Okay. If a person were to describe an event in a convoluted manner, would that also be – an event that actually occurred, would that also be representative of schizophrenic disorder, distortion of reality?

A Yes. The, that would come under what we call the thought disorder part of schizophrenia and there are many different kinds of thought

disturbances that we can see in schizophrenia. Mr. Edwards exhibited what we call loose associations, to me meaning that it was hard to follow his train of thought from A to B to C, you know. He would skip A to F to Z. Sometimes he couldn't answer the question, he would either be tangential, which means he kind of gave an answer but it was peripheral to what I was talking about. At times his answers were completely irrelevant to the question. Just didn't make [48] any sense.

Q Okay. Would convoluted be a way to describe that, in simple terms?

A It could be.

Q If, if, and I'm going to jump ahead to another witness coming in a few minutes, but if an attorney were to describe Mr. Edwards as not being able to logically communicate about the events of a particular crime that a person's accused of, would that be consistent with schizophrenia?

A Yes.

Q Would that surprise you if someone were to say that Ahmad Edwards was unable to do that?

A No, you know, he couldn't do it with me and if he had a lot of trouble with me, I'm sure, and I'm a trained professional, I'm sure he would have trouble with an attorney.

Q Okay, this schizophrenic disorder, how in, I take it he has delusions that go along with this?

A That's correct. When I saw him they were predominantly what we call grandiose

delusions. He had plans to write several [49] books, he felt, said his mother was a Black Panther and worked for the CIA, he said that he worked with his mother for the CIA in the 1960's and that was, of course, before he was born. At the time I saw him he didn't have auditory hallucinations or visual ones.

Q When Ahmad Edwards would try to describe something you say he would jump from A to F to Z and then back, not being logical. Was this a consistent manner of communication for him with you?

A Not exactly. I found that when I asked him very concrete questions like what is your name, what is your age, where were you born he could handle that and I would get a relative answer. But, you know, if I asked why questions or asked him to describe something, especially when I got into areas of his psychotic condition, that's, that's when he, he broke down and got very loose and had trouble communicating.

Q Okay. So if I were to ask him what's a judge do, could he handle a question like that?

A He was able to do that with me, I would [50] expect so.

Q If I asked him to explain why a judge does those things, the reasoning underneath the rule or the rules that govern a courtroom or why we need to know certain information as a defense lawyer, do you think he would be able to understand and comprehend the harder questions?

A He might or might not. Those are the kind of questions where he might have trouble.

Q Okay. All right. In looking at this, looking at his psychiatric diagnosis, what would your recommendation be as a doctor for someone like Ahmad?

A Well, as a psychiatrist I would recommend that he be placed on antipsychotic medication which would treat his, both his thought disorder and his delusional system.

Q Okay. Would he be a person who would benefit from a period of time at Logansport Hospital?

A Yes.

Q How long of a period of time, and I know I'm looking at a crystal ball here, but professionally can you give us some guidance [51] as to what we're talking about?

A Well, it's hard to say. Most people with a delusional disorder, when they're first treated they will respond in two, three, four months. The longer it's allowed to go on, generally the longer time it takes to respond to antipsychotics.

Q The longer the delusional disorder has been persistent, you mean?

A Correct.

Q And it would appear that if Doctor Schuster and Doctor Masbaum are correct that in '99 Ahmad had a delusional disorder, is that the kind of longstanding period of time without treatment that you've described?

A That's a fairly long period of time. I've seen people that have gone much longer, you know, five, ten, 15, 20 years, but...

Q The delusional disorder becomes entrenched then in his thought process.

A Yes.

Q Okay, and it just takes time, the longer it's gone on the longer it's going to take to fix that.

[52]

A Correct.

Q Okay. You do not anticipate then a quick turnaround from Logansport if he is committed to the hospital?

A Well, I would expect a minimum of two to four months.

Q Okay. All right. Have we covered all your significant findings here as it pertains to Mr. Edwards?

A One other finding I had was he gave me a really improbable drinking history. He said he could drink 48 tall Budweiser cans of beer per day and one pint of hard liquor. Probably not. That could be delusional. I chose to diagnose him as schizophrenic rather than delusional because of his thought disorder. If you have a thought disorder like that you really automatically get into the schizophrenic category of diagnoses.

Q And you are confident of your diagnoses within a reasonable degree of medical certainty?

A That's correct.

Q Your – just a couple of other questions. [53] Have you reviewed his writings?

A Yes.

Q Do his writings reflect the same convoluted pattern of communication he expresses verbally?

A Very much and in fact, I think the video tape of his voluntary statement reflect what I saw.

Q Okay. Did you see the video tape, one of the news crews where he was being arrested and he was on a gurney after being shot and he indicated to the news crew that he wanted to, that he appreciated the good service he received at the store?

A I can't recall that specific comment.

Q All right. I believe, if we covered all your findings that's all the questions I have.

A Okay.

THE COURT: Ms. Crawford?

[54]

CROSS EXAMINATION
QUESTIONS BY MS. CRAWFORD

Q Have you worked at Logansport, Doctor? Are you intimately familiar with Logansport and how they operate?

A I've visited there on a number of occasions, I've never worked for money there.

Q Okay, so you've been there to visit patients who were there?

A I've been there a couple of times to consult with patients and I've also been there two or three times to give talks.

Q To medical personnel?

A To primarily the psychiatrist staff.

Q Okay. All right. You indicated that there were no auditory or visual hallucinations. Did I understand that correctly?

A At the time I saw him I did not see any.

Q Okay, and would you have, is that something that's very common in schizophrenia, people suffering from that disorder?

A Um, in some forms of schizophrenia auditory hallucinations are and in some forms they aren't.

[55]

Q Okay. When you indicate there's a flight from reality as a characteristic of schizophrenia, what do you mean by that?

A A flight or break, a misperception of reality.

Q Uh-huh.

A That's, you know, as evidenced by hallucination or delusion.

Q You were describing his communication with you when he was being asked questions and giving you answers that sometimes the answers to the question would be peripheral and then at other times he would give answers that made no sense.

A Correct.

Q I know people like that, so can you tell me what it is that would differentiate the kinds of

answers you were getting from the defendant from the kind of answers that you would expect to get from someone who was schizophrenic that's suffering from this disorder?

A Yes. Well, I know people too that can be very circumstantial, they can be tangential [56] like the defendant but I think the things that differentiate him from other more normal people are his delusions, predominately grandiose delusions, that he has this protrusion that he talks about. I'm not sure whether that's a delusion or a hallucination. And then the extreme form of thought disorder that he has where, you know, he just skips all over the place and it doesn't relate at all to what you're talking about.

Q Okay.

A Something else is that, and this has been described with schizophrenia is his, his affect, his feeling tone. While it's not flattened, it's very constricted. You don't see highs, highs or lows.

Q Okay. And was that true in both – you had two interviews with him, right?

A I had one interview.

Q One interview with him, and that was when, in November –

A December 26th of 2002.

Q Okay. All right. And it's your testimony that psychotropic medications are a necessary [57] part to his improvement, that if he is schizophrenic and has this delusional disorder, is that what you're saying?

A Absolutely. You know, whether he's schizophrenic, as I've testified or he has a delusional disorder as Doctor Masbaum and Doctor Schuster have testified, both conditions require antipsychotics to improve.

Q And the only place that he can get those is from Logansport?

A Well, if he's found incompetent to stand trial, in all likelihood that's where he will go. He, he could get the same kind of treatment anywhere if somebody was willing to treat him.

Q Okay. Did you find, you obviously gathered quite a bit of information from him, biographical information as well as information about the incident that happened in July of 1999. Would that be accurate?

A Correct.

Q Okay, and so you were able to communicate with him to the extent that you were able to get that information, is that right?

[58]

A Correct.

Q Thank you.

MS. CRAWFORD: I don't have anything further.

THE COURT: Let me ask a few questions and then you –

MR. HILL: Sure.

COURT QUESTIONS WITNESS

Q Doctor Coons, is there any indication in his history that you've seen or that he's expressed of an onset of schizophrenia at some time in the past?

A I was unable to determine from him exactly when his illness had its onset because of his lack of insight. I would have liked to talk to, you know, somebody that really knew for a long time but, you know, I didn't know of anyone that was reliable. I do know that he saw a, I think it was a psychiatrist friend of his mother's in the early 1990's, a psychologist and I don't know exactly what [59] that entailed, but that apparently happened in Tennessee.

Q Now Doctor Coons, auditory or visual hallucinations in schizophrenics come and go, don't they? They're not constant.

A In some cases they come and go and some cases they are constant.

Q Now the new atypical antipsychotic drugs have done great things, have they not?

A Yes.

Q I'm talking about Zyprexa and some of those other new drugs that have only been on the market a few years.

A Correct.

Q Assuming that your diagnosis is correct and he is a schizophrenic, you feel that with the proper course of medication this would return him to a status where he would be able to assist in his trial?

A Yes.

THE COURT: And I want to point out something to both counsel just so that again to keep the record straight, I have a son who [60] is schizophrenic and I spend a lot of time worrying and sweating this issue and my son is on Zyprexa, I guess it is now. It does wonderful things but it's no, it doesn't cure him, it keeps him under control and that's about all it does. Anything else?

MR. HILL: Just a couple of questions.

REDIRECT EXAMINATION
QUESTIONS BY MR. HILL

Q You heard Doctor Masbaum's answer to the question about Doctor Berger no longer being at Logansport. Is that your understanding?

A Yes.

Q Okay. And the, the letters that I asked you about earlier, I don't know if I asked you this question. If I did, I apologize. But the content of those letters, would you describe the content of those letters as convoluted?

A Some of them very much convoluted.

Q Okay. Is that typical of his oral communication as well?

A Yes.

[61]

Q Okay.

MR. HILL: That's all.

THE COURT: I have one more I think.

COURT QUESTIONS WITNESS

Q Doctor Coons, if Mr. Edwards were sent back to the Department of Mental Health, what guarantee is there that he would receive any medication?

A I suppose there's no absolute guarantee but I would hope that if Logansport got him back a second time, the physician in charge would scratch his head and wonder why and, you know, and closely read examinations and treat.

Q Until your report there's been no indication of schizophrenia in this case.

A I'm sorry?

Q Until your report there's been no indications of schizophrenia as a diagnosis in this case.

A Well, I think Doctor Trexler's report mentioned a possibility.

[62]

Q Okay, you're right. It was kind of an aside in there.

* * *

[63]

LANCE TREXLER, having been duly sworn to tell the truth, the whole truth and nothing but the truth now testifies in this cause as follows:

THE COURT: Would you state your name for the record?

DR. TREXLER: Lance Emerson Trexler.

* * *

[64]

DIRECT EXAMINATION

QUESTIONS BY MR. HILL

* * *

[65]

Q Are you familiar with the competency restoration class at Logansport?

A I've never participated in it; I have reviewed some of the literature describing that process and so I have that level of familiarity with it.

Q Would you agree it's a class where they take someone like Ahmad and explain to him what Ms. Crawford would do as the prosecutor, what I would do as the attorney, public defender, what judge would do, what the witness's role – or jury's role?

A Yes.

Q And in fact they do playacting, role playing?

A Yes.

Q And through this process someone like Ahmad [66] would be able to learn to respond to what's a defense lawyer do, he helps me, that kind of stuff?

A Yes.

Q What's Ms. Crawford do, she tries to put me in jail, that type of thing.

A Yes.

MS. CRAWFORD: That's what they tell him?

MR. HILL: Well, that would be his answer.

MS. CRAWFORD: Oh.

Q I mean, that would be his, and he would answer those questions in that manner.

A Mr. Edwards can learn and can recite and can retrieve basic non-complex facts.

Q Now, um, in examining Ahmad Edwards, could you describe your neuropsychological findings of him as it pertains to a possible head injury?

A Mr. Edwards is very tangential and unable to stay focused on a topic when it relates to any information that is not about simple facts or as Doctor Coons indicated, with respect to any, just simple demographic information about himself, and even that becomes infused and tangential, particularly as it relates to his own history at times. So obtaining a good history is very difficult from a medical, from a neuropsychological perspective. He is very perseverative. That is, that means that we go over things over and over and over again. He is, has intelligence and Mr. Edwards is not stupid. He actually has some good intellectual capacities, but they are disrupted significantly by what I would call a discontrol, or an inability to regulate his own thinking according to the circumstances at hand.

Q Okay. Now, did he have a head injury?

A Yes.

Q Do you think, or do you know whether or not this head injury has caused any interference with his logical thought process?

A It would appear to be the case that it has. Of course patients with schizophrenia can have cognitive and often do have cognitive [69]

impairment. So how much of this is his head injury and how much of this is his diagnosis of schizophrenia is very difficult to determine, and if this were simply a clinical matter, what we would recommend is, is that he receive the appropriate medication as I recommended in my examination of 2000 and that then he be re-evaluated neuropsychologically to determine if he still has cognitive impairment that would be associated with a head injury. That's how we would manage this in a good clinical situation.

Q Okay. Is he likely to get a good neuropsychological examination at Logansport Hospital?

A I don't believe they have neuropsychologists on staff. That doesn't mean it's not a good psychiatric facility, it just means they don't have that available.

Q But you would recommend that as, after he's gone through the medication process, you would recommend that as something that should follow-up to determine whether or not there's [70] any interference from this head injury?

A That's correct.

Q What was the nature of the head injury that was described to you?

A The one was a car accident in 1995 and the patient did have loss of consciousness at that time and there was also a second injury when the patient was hit as a pedestrian. It was impossible to determine the exact date of that and I was unable to obtain medical records on

that and so the veracity of that report is unclear to me.

Q The first injury, the car accident, were you able to obtain medical records on that?

A Yes. Yes, I was.

Q And there was, in fact, a documented, medically documented head injury?

A That's correct.

Q With loss of consciousness.

A That's correct.

Q And that was as a result of a motor vehicle accident approximately when?

A September 13, 1995.

Q Which would predate all of this?

[71]

A That's correct.

Q Okay. In your report you agreed originally, and in your follow-up report that he has a delusional disorder?

A That's correct.

Q Do you think he's schizophrenic?

A I would concur with Doctor Coons' opinion, after reviewing that at the time of initial evaluation in 2000, I said that I suspect this patient has a major thought disorder such as schizophrenia and it should be noted that he has a very strong family history in this regard. Additional testing is required. I made that diagnosis.

Q Strong family history of schizophrenia?

A Schizophrenia, that's correct.

Q Would that come through his sister?

A That's correct.

Q And his mother?

A That's correct.

Q Meaning that they are diagnosed as being schizophrenic.

A That's correct.

Q At the time you've conducted – how many [72] evaluations or how many times have you seen Ahmad Edwards?

A At least three and perhaps four.

Q Okay. Describe his ability to communicate with you in these meetings.

A It's extremely difficult to communicate because Mr. Edwards is, as I said earlier, often tangential and very disorganized or disregulated in his thinking and therefore, while he can answer simple questions, he is unable to relate to me any complex concepts or ideas of beyond basic information, and the same is true for the written material in its content.

Q The written material, and we have volumes of that.

A Yes.

THE COURT: Excuse me.

MR. HILL: Do we need to take a recess?

THE COURT: No.

Q Okay. The written materials, how would you characterize the written materials?

[73]

A They are analogous. They are disorganized, they're incomprehensible.

Q Okay. In fact, he, after your, you examined him last night.

A That's correct.

Q And you examined him awhile back?

A In February of 2000 and then again in, I believe early 2001.

Q Okay. And then recently he forwarded letters to you?

A That's correct.

Q And these have been identified as Exhibits A, B and C.

A Okay.

Q Are these the, copies of the letters you received from Ahmad Edwards?

A These are the original letters.

Q Original letters?

A Yes.

Q Okay. Did you examine those?

A Yes.

Q Okay, are they, as they came to you in the mail?

A Yes.

[74]

Q Okay, and they were sent to your clinical office?

A Yes.

Q Okay.

MR. HILL: I would move to admit A, B and C.

THE COURT: Ms. Crawford, have you seen these?

MS. CRAWFORD: I have now, yes, Mr. Hill gave me a copy of these this morning.

THE COURT: Do you have any objection?

MS. CRAWFORD: No, I don't, Judge.

WHEREUPON, DEFENSE EXHIBIT NUMBERS, A, B, C ARE NOW ADMITTED INTO EVIDENCE WITHOUT OBJECTION.

MR. HILL: These are being offered, Your Honor, to demonstrate what's been demonstrated through the other writings that are in the court file. These are just the most recent examples.

[75]

Q Is that a fair characterization?

A Yes.

Q Okay. You would describe the communications, those letters, as being consistent with his oral communication?

A That's correct.

Q Convoluted?

A That's a common way to describe that, yes.

Q Okay. The, in all the times you've actually spent with Ahmad Edwards, has his ability to communicate changed in any appreciable way?

A No.

Q You read the Logansport records.

A Yes.

Q Your, and you heard what Doctor Coons said the entries in the records from medical personnel indicating delusional thoughts, delusional disorders, convoluted communication. Would you agree that you've also reviewed those entries in the Logansport records?

A Yes.

Q Would you agree that no reference to any of those entries made it into Doctor Berger's [76] report?

A Yes.

Q Would you agree that Ahmad Edwards needs to go to a facility where he can receive care and treatment, medication?

A Yes.

Q And that you would also recommend neuropsychological evaluation upon, what would you say, after the medication had a chance to work?

A That's correct, after some reasonable attempt to treat, appropriately treat this disorder through medications and psychotherapy, then he should be re-evaluated to examine the possibility that he still has cognitive impairments secondary to the head injuries.

Q I believe that's – have we covered all your significant findings?

A Yes.

Q Okay. And you saw him again last night in preparation for this hearing.

A That's correct.

Q Has his ability to communicate or his thought process changed in any appreciable way?

[77]

A No.

Q You think he has a thought disorder?

A Yes.

Q Okay.

MR. HILL: That's all the questions I have.

* * *

[86]

COURT QUESTIONS WITNESS

* * *

[87]

Q Doctor Trexler, were Mr. Edwards to be returned to the custody of the Department of Mental Health and given antipsychotic drugs, they would in no way affect him if he has a traumatic injury to the brain? They're not going to cure that.

A That's correct, Your Honor.

Q They might clean up some of the disordered thinking and affect and some of these other things of schizophrenia, however?

[88]

A That's correct, Your Honor, but my concern is, is that on examination, and this was noted last night as well, and that is that Mr. Edwards continues to have some difficulties with motor functions of his left hand, and that was noted in my very initial examination and the asymmetry between use of one hand and the other is not a symptom of schizophrenia. That is a symptom like you would expect to see in a stroke patient, for example, where they are paralyzed on one side. Certainly Mr. Edwards is in no way that severe, but when you give him tests where you look at coordination of his hands, he shows an asymmetry that I don't think is easily explained by schizophrenia but we can be hopeful that appropriate treatment for his schizophrenia will at least ameliorate the majority of his symptomotology.

* * *

[92]

MR. HILL: I have just a couple questions.

THE COURT: Sure.

REDIRECT EXAMINATION
QUESTIONS BY MR. HILL

Q I forgot to ask you about this discussion about the protrusion.

A Yes.

Q Did Ahmad Edwards tell you that he had a protrusion coming out of his head that he could see in a mirror?

A Yes.

[93]

Q And were you present in court when he was explaining that not only to you but to Doctor Masbaum?

A Yes.

Q And he had explained that to you prior to the hearing?

A Yes.

Q Okay. Did he describe it as being associated with stress?

A Yes.

Q And stress tends to improve or aggravate his ability to communicate?

A It aggravates it.

Q So as trial approaches, one would anticipate what?

A That he will deteriorate.

Q Okay. He did not have a protrusion, did he?

A He did not.

Q Okay. And he showed you where it was sticking out and how he, described how he could see it?

A Yes.

Q Okay.

* * *

[94]

MARK JONES, having been sworn to tell the truth, the whole truth and nothing but the truth now testifies in this cause as follows:

THE COURT: Thank you.

[95]

DIRECT EXAMINATION
QUESTIONS BY MR. HILL

Q Would you state your name, please?

A Mark A. Jones.

Q Mr. Jones, I know you and I believe the court knows you to be an attorney working for the Public Defender Agency here in Marion County?

A That's correct.

Q At one point you were assigned to Criminal Court Five, were you not?

A Yes.

Q As part of that assignment, did you have occasion to help me represent Mr. Edwards?

A Yes, I did.

Q You no longer are in that assignment, are you?

A That's correct.

Q Okay, you've changed jobs, you're supervising younger attorneys, training them, that kind of thing.

A Yes, sir.

Q And you are no longer able, because of that, to represent Ahmad.

A That's correct.

[96]

Q And you've withdrawn your appearance.

A I don't know that a formal withdrawal has been filed. There was supposed to be a substitution of counsel that would take my name out of the file and put someone else's in, yes.

Q Bottom line is you are no longer his attorney?

A That's correct.

Q And I'm counsel of record.

A That's my understanding, yes.

Q Okay. You've had numerous occasions then in the – let me back up. How long did you represent him?

A I believe I, well, I started representing him when he came back from Logansport. The case had been with you and Ms. Diane Abel who was previously the supervisor in Court Five.

Q That's true.

A She left, I took over that supervisory responsibility and so I automatically became his lawyer when he came back from Logansport.

Q Okay. So for a number of months, a couple of years you were his attorney?

[97]

A Yes.

Q In the, I want to have you address one issue. Can you – and that is the issue of communication, whether or not he can effectively communicate with us or with you as his attorney. Do you think he is able to effectively communicate with you?

A No.

Q In your opinion does his lack of ability to communicate make him not competent to stand trial?

A That's correct.

Q Okay. Could you characterize a couple of things. First of all, if you're talking to Ahmad about simple things, who the judge is, where the jury sits, that we're supposed to present evidence on his behalf, that kind of thing, does he understand those kinds of concepts?

A He can tell you what the judge does in a very brief way and what defense attorney does and what prosecutor does. Does he understand it? No.

Q Okay, so the understanding that underlies [98] that kind of concept is absent?

A Correct.

Q Have you ever had an effective conversation with him, a meaningful conversation with him about the core facts of this case?

A No.

Q Have you attempted?

A Yes.

Q Guesstimate how many times you've attempted.

A Fifteen.

Q Okay.

THE COURT: How many was that? I'm sorry.

A Fifteen.

THE COURT: Fifteen?

Q You've been present with me when I've attempted to have that sort of conversation with him.

A Yes, I have.

Q Have you ever been able to recognize that he's been able to communicate with me?

A No.

[99]

Q You've read the letters –

A Let me correct that. He can communicate but not relevant conversation.

Q I'm sorry, thank you. He cannot communicate effectively about the core facts of the case.

A That's right.

Q He cannot impart the knowledge that's necessary to defend him.

A Right.

Q If – you've read the letters, these various writings that we've provided to the court.

A Most of them, yes.

Q Okay. You would – how would you characterize those letters?

A Well, I've been present obviously in court this morning. I think convoluted is almost a nice term but I would say definitely convoluted. They're not on topic, they are not related to anything in court. He wants to file pleadings in court that are completely unrelated to anything. For instance, his motion for dress code, talked about a dress code in various parts of the state, but he was insistent with both you and [100] me that they be filed with the court,

even though we tried to explain to him that they weren't relevant to anything.

Q Okay, and is that the one where he also detailed code for when he was going to go to different parts of the country?

A Yes.

Q And how he would have to have a different outfit that the court should provide for him.

A I don't recall even being clear that he limited that just to him, but certainly he talked about dress codes in different parts of the country, yes.

Q Okay. His writings, do they represent his oral communication?

A Yes. I would actually say that his writing almost seems better than a lot of his oral communication because he at least stays on task a little bit, although completely irrelevant in written, but he is very, in words used earlier, tangential when you're trying to have verbal communications with him.

Q You heard Doctor Coons describe how Ahmad [101] would start on a topic and go from point A to point F to point Z and then back to a point somewhere in the middle.

A Right.

Q Would you agree with that?

A Yes.

Q He, has he ever refused to talk with you?

A Not that I can recall. He's not refused to talk to me, he has refused, I wouldn't, he has not answered my questions, he's not been

responsive when I've asked questions specifically about the instances at issue here. Whether that's a refusal or whether that's inability I can't say, but he has not answered my questions.

Q Okay. As an officer of the court, is it your opinion that he is not competent to stand trial now?

A That's my opinion, yes.

* * *

[102]

COURT QUESTIONS DEFENDANT

Q Mr. Edwards? Mr. Edwards?

A Yes, sir.

Q Do you know Mr. Jones here?

A Yes, sir.

[103]

Q Do you know what we're doing here this morning?

A Yes, sir.

Q What are we doing here this morning, sir?

A Reviewing my health status, reviewing me.

Q Mr. Jones has testified that he finds it impossible to communicate with you. You feel the same way?

A I guess I, it's hard for me to communicate with anybody. I just, I'm not, I can't concentrate, I come out of concentration so easy. It's just not, nothing makes sense when I do, you know.

Q Mr. Edwards, there's been some suggestion here this morning that you may suffer from a

disease known as schizophrenia. Have you ever heard that name before?

A Yes, sir. I probably do. I've seen it in some of the papers.

Q Now Mr. Jones – er, Mr. Edwards, there's also been some testimony that there's some new medications on the market that are very helpful to people with this disease if, in fact, you have it. Would you be willing to

[104]

take that medication?

A Yes. I would certainly be willing to take anything that would help me back to health or help me out of this, help me out of this pain that I feel.

* * *

STATE OF INDIANA VERSUS AHMAD EDWARDS

CAUSE NUMBER 49G05-9907-CF-121975

JURY TRIAL – JUNE 27, 2005

HONORABLE GRANT W. HAWKINS

MR. HOLLINGSWORTH FOR STATE

MR. CUSHING FOR DEFENDANT

EXCERPT REQUESTED BY ATTORNEY GENERAL'S OFFICE ON JANUARY 28, 2008 AND TYPED BY COURT REPORTER DONNA BOYLE, CRIMINAL COURT FIVE:

JUNE 27, 2005

THE COURT: This is State of Indiana versus Ahmad Edwards, cause number 99-121975. Mr. Edwards is here with Mr. Cushing, State by Mr. Hollingsworth. This matter is set for trial by jury. Mr. Cushing, you ready for trial by jury?

MR. CUSHING: Yes, Your Honor.

THE COURT: State ready?

MR. HOLLINGSWORTH: Yes, sir.

MR. EDWARDS: Objection, Your Honor. I would like to say something, Your Honor.

THE COURT: Who was talking?

MR. EDWARDS: You was, Your Honor.

THE COURT: Who was talking.

MR. EDWARDS: You was, Your Honor. I would like –

THE COURT: Tell me why it's a smart thing to interrupt me when I'm talking.

MR. EDWARDS: Your Honor, it's not, it's not appropriate –

THE COURT: It's not, okay, then don't, okay?

MR. EDWARDS: I definitely want to say something.

THE COURT: Well, wait your turn, okay?

MR. EDWARDS: Yes, sir.

THE COURT: Any preliminary issues, Mr. Hollingsworth?

MR. HOLLINGSWORTH: Not at this particular second in time, no.

THE COURT: Do you expect any between now and when we get the jury?

MR. HOLLINGSWORTH: Depends on what comes from the defense side. I have no issues at this moment.

THE COURT: Any preliminary issues, Mr. Cushing?

MR. CUSHING: Your Honor, I spoke with my client and my client wishes to address the court with regard to proceeding pro se.

THE COURT: Is that what you were trying to interrupt about?

MR. EDWARDS: Yes sir, yes sir. I just, I wanted to get it off, get it off of on the record, actually.

THE COURT: Make your record.

MR. EDWARDS: Your Honor, I actually do have a statement. Your Honor, the, determining the value of the property of the discovery that I received, a general judgment has come across for me to make and it's actually needing to be made upon the court, the court needs to make the decision. The specific findings and the control of the discovery is, is able for me to handle but there's an exception, it's a noble one and it applies to the review of the information and however it may seem, it is a standard to me. It's real important because it deals with my life, Your Honor, and it, it seems as if for the past six years preparing for this case, attorneys have isolated me from the material or from the discovery and it troubles me to think that I won't make a good case or I won't have a good trial of this. Your Honor, basically it's, it's, either you can give me a, another attorney or I'll have to go pro se with this because I'm, I'm believing that the changes that need to be made with the case are going to cause for me to suffer with the lawyer, Dirk Cushing.

THE COURT: What is he not doing?

MR. EDWARDS: Well, we, we've only had strict tests with the discovery for about 40 minutes. Now, that's, that's –

THE COURT: What do you mean by strict tests?

MR. EDWARDS: Well, the tests to, to review the, the, some of the laws, memorandum (sic) warnings, some of the evidence, some, the difference forms of evidence, the, the contradicting statements, the cross examinations, the affidavits, some of the, the –

THE COURT: Mr. Cushing, you spent more than 40 minutes talking about the case with this man?

MR. CUSHING: Your Honor, I have. It just –

THE COURT: Okay, thank you. Anything else, Mr. Edwards?

MR. EDWARDS: Well, Your Honor, it's been, we've had a 90-day period to prepare but I've only had three visits from Mr. Cushing in the past, in the past three days. I've seen him Tuesday, I've seen him, uh, or I've seen him Wednesday, I've seen him Friday and then a little bit Saturday and Sunday. All of the meetings together were about 20 minutes long so we're looking, I'm looking at about 40 to maybe a little bit more, maybe 50 minutes with him with such a large case, and this case is, it's just too enormous for 40 minutes to go forth with a trial today.

THE COURT: Spent more than 40 minutes with him, Mr. Cushing?

MR. CUSHING: Your Honor –

THE COURT: Yes, sir – is that a yes?

MR. CUSHING: One day alone I spent an hour and a half over there.

MR. EDWARDS: Well, Your Honor –

THE COURT: Anything else, Mr. Edwards?

MR. EDWARDS: I still don't believe that I would like Mr. Cushing to be on my counsel. I don't, I, I object to him being on my counsel, Your Honor.

THE COURT: Mr. Hollingsworth, what's the standard for a defendant going pro se?

MR. HOLLINGSWORTH: As we speak Mr. Poindexter's reviewing the ***Sherwood*** case which sets out the standards.

THE COURT: Mr. Poindexter, if you could summarize.

MR. POINDEXTER: I might be of some assistance. There, if he has made the court aware of his desire to proceed pro se, and I think the record's clear he has, at this point in time it's beholden upon the court to inform Mr. Edwards and ask him some questions that illustrate the complexity of the case, the relative training and skills of the lawyers present, see about his familiarity with, like the rules of evidence, courtroom procedures. I don't know if your particular bench book has like the ***Faretta*** script or the ***Sherwood*** script –

THE COURT: It does not.

MR. POINDEXTER: Okay. Well, then I think we can work on putting that together but our federal district court has previously sent back a case that was tried by Judge Young in the absence of such a hearing and, for him to, and that was after trial and conviction, so to make it a little more clear for the court, we will have to hold a hearing, we will need to make an inquiry and I believe that the court will probably have to read the ***Sherwood*** case. There's several operative paragraphs or pages in there of areas of inquiry. Then make those areas of inquiry which are designed to illustrate for the defendant perhaps the relative skill or training and experience that might be necessary to adequately represent himself. Inquire of his familiarity with courtroom proceedings, rules of evidence and those type of things, as well as to inform that should he proceed to trial, in essence he will be bound by the rules of evidence, the rules governing courtroom behavior and that in doing so, he could place himself at a

disadvantage. And I'm sorry for not being able to give the court any further assistance at this time, other than I think given a few minutes I might be able to find someone's script from the bench book if you haven't found it.

THE COURT: Well, I have the bench book. I don't have the, well –

MR. HOLLINGSWORTH: This is ***Sherwood***, Your Honor.

THE COURT: Okay.

MR. HOLLINGSWORTH: I'm giving counsel a copy –

MR. POINDEXTER: And I apologize, I don't know what, if judges have supplemented theirs in other courts or not.

THE COURT: Well, let me see if what I have –

MR. POINDEXTER: Okay.

THE COURT: - seems satisfactory. If not, we'll take a short recess. Mr. Edwards, you have the right to waive counsel and appear pro se. There used to be a requirement that you knowingly and voluntarily waive your right to represent counsel. I think you've done that. There's a further requirement that you be advised of the dangers of representing yourself. You see the deputy prosecutor over there, Mr. Hollingsworth?

MR. EDWARDS: Yes, sir.

THE COURT: Okay, Mr. Hollingsworth, how long you been practicing?

MR. HOLLINGSWORTH: Thirteen years.

THE COURT: And you've been assigned to this major felony court on, you've had two tours?

MR. HOLLINGSWORTH: I've been in this particular court for eight years.

THE COURT: Okay. And you've also worked in Grand Jury?

MR. HOLLINGSWORTH: Yes, which also brought me back and forth to this court on occasion.

THE COURT: How many jury trials have you had?

MR. HOLLINGSWORTH: About 110.

THE COURT: Okay. Pretty decent conviction rate?

MR. HOLLINGSWORTH: Pretty decent.

THE COURT: How many trials have you attended, Mr. Edwards?

MR. EDWARDS: Well, I've actually attended, counting the first phrase, I'm speaking of pre-trial –

THE COURT: No, how many jury trials have you attended?

MR. EDWARDS: I've only attended one jury trial.

THE COURT: Okay, were you counsel at that trial?

MR. EDWARDS: No, I was not.

THE COURT: Okay.

MR. EDWARDS: I don't have a license to practice law, no, sir.

THE COURT: Well, you didn't, you weren't pro se last time is what you're telling me.

MR. EDWARDS: No, sir. I haven't, I haven't had a felony or I haven't been convicted of any offenses.

THE COURT: Now, let's discuss a little bit about your familiarity with the rules of evidence.

MR. EDWARDS: Yes, sir.

THE COURT: How much experience do you have with those rules?

MR. EDWARDS: Rules of evidence, I have about three and a half years experience.

THE COURT: Have you ever read them?

MR. EDWARDS: Yes, sir.

THE COURT: How are they organized these days?

MR. EDWARDS: The rules of evidence are organized systematically.

THE COURT: Okay, are they organized numerically?

MR. EDWARDS: Metric system is used, yes, sir.

THE COURT: Okay. The 400 series of rules applies a lot in criminal cases. Are you familiar with the 400 series, Rules 400, 401, 402, 403, of the rules of evidence?

MR. EDWARDS: Yes, sir.

THE COURT: What generally do those rules address?

MR. EDWARDS: Uh, dealing with, let's see, 404, not 404 but 401, they're dealing with the defendant's opinions, so I've seen organizations and associations, I've seen the 404 addressed to credit, the credit of the witness and then –

THE COURT: Okay, you're absolutely wrong, do you understand?

MR. EDWARDS: Well, Your Honor –

THE COURT: Do you understand? You're wrong about the 400 series, do you understand?

MR. EDWARDS: What part of the 400 series –

THE COURT: Do you understand?

MR. EDWARDS: Yes, sir. I have understanding, have understanding.

THE COURT: Okay. Now, the 800 series also has an application in court. What does the 800 series have to do with a criminal court?

MR. EDWARDS: Your Honor, I honestly would need a little bit of time to study that. Today I can't prepare –

THE COURT: Well, today, today's your ready for trial –

MR. EDWARDS: Well, Your Honor –

THE COURT: So you're not familiar with the 800 series is what you're telling me?

MR. EDWARDS: Well, Your Honor, I would actually need to take a minute to review the information because today I didn't even expect for Mr. Cushing to push forward the trial. We talked about it, the visits, and I asked him for more time, I said we have just gotten the discovery, we need to review. And if, if I had an inkling of an idea that I would have to walk through the woods alone on this one, I would have studied intensely. I have a copy of the federal rules of procedure –

THE COURT: You understand this is not a federal court?

MR. EDWARDS: Yes, sir, but I have a copy of the trial rule procedures that give the, evidence, rules of evidence as a reference.

THE COURT: Okay, now, we're having a pre-trial motion. What's the first step in the trial itself?

MR. EDWARDS: Well, before, before any form can be produced in trial, a person or party would have to file the information with the clerk on the face of the document so that it could be presented. So to me that would be the first thing to do, was to put orders upon the clerk.

THE COURT: Okay, you're wrong again.

MR. EDWARDS: Under Trial Rule 71.

THE COURT: You're wrong again.

MR. EDWARDS: Yes, sir, because the court is always open?

THE COURT: Mr. Poindexter, Mr. Hollingsworth, Mr. Cushing, I'm satisfied that we have a knowing waiver, which is different from an intelligent waiver. I am satisfied also that the defendant has absolutely no concept of what has to be done to present a defense or to defend himself against the charges brought, the evidence intended to be introduced and the like.

MR. EDWARDS: Objection.

THE COURT: Was that you interrupting again?

MR. EDWARDS: Your Honor, objection, I put an objection out.

THE COURT: Okay. Based on ***Sherwood***, what's the next step as you understand it, Mr. Poindexter?

MR. POINDEXTER: In ***Sherwood***, I think before we reach the court's going to make a conclusion, and I apologize when you use these particular prints, I can't give you a page number, it's the third page in from the end of the opinion titled advisements to pro se defendant and it also indicates that that caption was not part of the original case, it's been done by probably West, there are a series of other questions. A competent hearing, it talks about asking if he's responsible for conducting voir dire, it's all in bold.

THE COURT: Third page from the end?

MR. POINDEXTER: Yes, and I apologize, I –

THE COURT: That's all right.

MR. HOLLINGSWORTH: If I may interject, there's also the issue of unfortunately, and I disagree with this but this is the law, ***Sherwood*** case holds that the competency to stand trial is the same as the competency to waive representation by counsel. I am concerned, based upon what the defendant said today, that he hasn't a clue as Your Honor, I've rephrased it, but as to how to proceed. But if he has been determined to be competent and if he is still competent to try this case, once all the advisements are done, I see the issue, though, he is knowingly waiving but is he intelligently waiving? I don't have a case that defines the standard –

THE COURT: That's a finding I'm reserving.

MR. HOLLINGSWORTH: Yeah, that's, I don't know the standard that guides that.

MR. EDWARDS: I'm prepared with documentation...

THE COURT: How do, how do you do voir dire?

MR. EDWARDS: Beg your pardon?

THE COURT: What's voir dire, what is voir dire?

MR. EDWARDS: Voir dire is the selection of jury.

THE COURT: And how do we do that?

MR. EDWARDS: Well, there's, it's a striking process. We select the jurors by ten strikes apiece.

THE COURT: How many, how do you exercise those strikes, those challenges?

MR. EDWARDS: Well, speaking with the jurys we pose, we impose questions that won't interrogate the jurors, for one. Won't allow them to pre-justice the case for two. And we ask them questions that will relate to the case but won't, won't put, won't put a burden on the court for selecting them.

THE COURT: Are you prepared to make an opening statement?

MR. EDWARDS: Yes, sir. But not, not today. I would have to prepare for the opening and closing statements.

THE COURT: So as we sit here today, you're not ready to make an opening and closing statement, is that right?

MR. EDWARDS: Not today, I would have to move, I would at least have, or I would, I'm begging upon the bench, Your Honor, for an allowance of a period of time, maybe a short period of time just to prepare for the knowledgeable waivement, or not the knowledgeable waivement today but the volunteering of the waivement of counsel today. I'm begging, Your Honor.

THE COURT: Mr. Hollingsworth, are there items of evidence that might be subject to objection, whether well-taken or not? You can recognize as an officer of the court that there might be an objection and argument required?

MR. HOLLINGSWORTH: Sure. There might be.

THE COURT: Okay.

MR. HOLLINGSWORTH: I tend to be constrained by the rules of evidence but there are sometimes gray areas.

THE COURT: How about admission of evidence?

MR. HOLLINGSWORTH: Yes, there would be photographic, there would be physical, there will be video tape...

MR. EDWARDS: Your Honor, I'm prepared to deal with it.

THE COURT: What are the predicate questions that have to be asked before a video tape's admissible?

MR. EDWARDS: Well, video tapes would be under physical evidence and cross examining one of State's witnesses, I would actually have to ask some of the basic essentials of who, what, where, why and when to see if the individual was actually there or if they have any knowledge of the material that they are seeing, if they remember that the material was recorded or just, just simple, the simple things would just really be enough for me to be secure.

THE COURT: Okay. You're telling me essentially that you want to try your case but you're not able to try it today, is that right?

MR. EDWARDS: Yes, sir.

THE COURT: So if I don't grant you a continuance, you'll need a lawyer, is that right?

MR. EDWARDS: Well, Your Honor, if you didn't write me a continuance I would have to ask you to assign me a new attorney so that I would – yes, yes, Your Honor, that's right, yes, sir.

THE COURT: All right. Are you asking for a continuance?

MR. EDWARDS: Yes, sir.

THE COURT: Okay, I'm denying that request. Now, as far as assigning you another attorney, I don't assign attorneys. That's a function of the Marion County Public Defender. Sometime today you'll be given his address, maybe even his phone number. You can ask him to determine whether or not you had a good counsel and whether or not the counsel is properly prepared, but I'm denying your request for a change of counsel because I can't grant it. Otherwise we're ready for trial today with Mr. Cushing representing you. Anything else, Mr. Cushing?

MR. CUSHING: No, Your Honor.

THE COURT: Anything else, Mr. Hollingsworth?

MR. HOLLINGSWORTH: No.

MR. EDWARDS: Your Honor, would it be possible that I could file an objection –

THE COURT: Why do you keep objecting?

MR. EDWARDS: I'm not comfortable with Mr. Cushing on my case, Your Honor.

THE COURT: That's not – we're talking about why you object, why you interrupt, okay? Stop it.

MR. EDWARDS: I have a, I have a filing that I would like the clerk to file, Your Honor, if that would be possible –

THE COURT: Anything else known to you, Mr. Poindexter?

MR. HOLLINGSWORTH: One other matter per the *Sherwood* case is clearly that the defendant's request to go pro se is timely made. I'd just like the record to reflect that this request is certainly not tim[illegible] made –

THE COURT: By denying his request for a continuance –

MR. HOLLINGSWORTH: Yeah.

THE COURT: I'm implying that at the very least.

MR. HOLLINGSWORTH: Thank you.

THE COURT: You still have a lawyer. You talk with your lawyer about whether you're going to file something or not.

MR. EDWARDS: I haven't had the opportunity.

THE COURT: Well, he's here now.

MR. EDWARDS: Your Honor, I don't know if, Your Honor, may I ask a question to the bench, now directed (inaudible) to the bench?

THE COURT: No, you ask your lawyer.

AND THIS IS END OF REQUESTED TRANSCRIPT.

STATE OF INDIANA VERSUS AHMAD EDWARDS

CAUSE NUMBER 49G05-9907-CF-121975

JURY TRIAL – DECEMBER 19, 20 AND 21, 2006

SENTENCING JANUARY 17, 2006

HONORABLE GRANT W. HAWKINS

MR. HOLLINGSWORTH FOR STATE

MC. MCSHANE FOR DEFENDANT

FIRST DAY OF TRIAL
DECEMBER 19, 2005

THE COURT: This is State of Indiana versus Ahmad Edwards, cause number 99-121975. Mr. Edwards is here with Mr. McShane, State by Mr. Hollingsworth. The matter comes on for trial by jury this morning. I have been advised—I'm sorry, Friday I was told, last week I was told Mr. Edwards wanted to proceed *pro se* and we would have to think about that today. I have a copy of **Sherwood** up here somewhere, so let me walk through it.

MR. MCSHANE: Wouldn't do you any good, Judge, I don't ever look at it until night.

THE COURT: I hear you. At any rate, as you are aware, Mr. Hollingsworth e-mailed me his concern, a concern he discussed with you, that there be a hearing on Mr. Edwards' request and that I not rely on the record made previously. That's where my research was leading me but I responded that I appreciated his thoughtful comments on the issue.

MR. MCSHANE: That's, that's right, Judge, and Mr. Hollingsworth and I, for the record, heard about

this on Friday, he asked if I had any objection if he contacted the Court about it, I said none whatsoever and what you just stated is consistent with what he told me on Friday.

MR. HOLLINGSWORTH: We'll get you a copy of the e-mail if you'll have it.

THE COURT: I had no doubt about it; as a matter of fact, I think I printed the e-mail and put it in the file somewhere. The file's voluminous so who knows where.

MR. EDWARDS: Objection, Your Honor. Objection, Your Honor.

THE COURT: What's your objection?

MR. EDWARDS: My objection is me and my attorney actually had discussed a defense, I think prosecution had mentioned that, and we are in disagreement with it. He has a defense and I have a defense that I would like to represent or present to the Judge.

THE COURT: What does that have to do with what I've been saying so far?

MR. EDWARDS: I just wanted to make the record with that objection. This is the most present opportunity that I had. Thank you.

THE COURT: All right.

MR. EDWARDS: Thank you, Your Honor.

THE COURT: Mr. Hollingsworth, consistent with the note you sent me and that note being consistent with the conversation you and Mr. McShane had, I believe during the last trial I inquired of Mr. Edwards regarding the fifteen points mentioned in

the **Sherwood** case. At that time I asked Mr. Edwards if he understood that he would be responsible for certain portions of the trial and he indicated yes. I didn't inquire into his ability to actually perform those functions because performance, I don't think, is necessarily a criteria anymore as long as the person understands he has the obligations. The denial last time, I think, was based primarily on the fact that Mr. Edwards wanted to proceed under the defense of insanity and that that request would have caused a continuance which, which is a basis the Court can use for denying the opportunity to proceed *pro se*. Mr. McShane, does your client—if your client proceeded *pro se*, would he be seeking the invocation of that defense?

MR. MCSHANE: Let me double-check with him, if I may.

THE COURT: Okay.

DEFENSE CONFERS WITH DEFENDANT OFF THE RECORD

THE COURT: Any progress, Mr. McShane?

MR. MCSHANE: Just one more moment if I could, Judge. Thank you for the time, Your Honor. I'm always a little bit shy about getting into attorney/client matters but I would say this is a matter of a conclusion, having spoken with Mr. Edwards here. It appears to me that he does not wish to pursue the defense of insanity at trial, should he represent himself. I should state for the record I have no intention of doing that or we would have filed the appropriate documents with the court to put that specific statutory defense motion with respect to the pre-trial requirements under the Indiana competency

and insanity clause. If Mr. Edwards were allowed to represent himself, and I should make it clear my position is the same as it was last week when this matter came before the Court and that is, he has an absolute right to do that, which I believe he is, and two, that it not delay the proceedings or otherwise interrupt the efficient and fair administration of justice such as requirement a continuance. What he's indicated to me is that were he to proceed to trial, representing himself, that his defense would be self-defense. He is prepared to go forward with that defense on his own today. That is not the defense that I would be intending to advance to the jury in this case. And for the record, as his counsel, and I really haven't wavered from this since I first became familiar with this case, I believe that the defense that would be most in Mr. Edwards' interests to be advanced at trial would be basically that he didn't intend to kill anybody, not that . . .

THE COURT: Whereas he would be arguing he intended to kill but was doing so in self-defense?

MR. MCSHANE: Well, he intended to protect himself under . . .

THE COURT: Using deadly force?

MR. MCSHANE: Using deadly force.

MR. EDWARDS: Objection, Your Honor.

THE COURT: It's not time for you to object right now.

MR. EDWARDS: All right, okay.

MR. MCSHANE: So those, from my vantage point anyway, those defenses are different in the case and again, regardless of my views, I think that his right to represent himself under the Sixth Amendment of the United States Constitution and the parallel provision of the Indiana Constitution, the section of which escapes me right now, he still has an absolute right to do that as long as he doesn't run afoul of what I perceive to be the only two exceptions here, so that's our position.

THE COURT: Well, I'm, you know, the easiest thing for me to have done would have been to say sure, let him defend himself, get the case done in a couple of days and not really care whether justice had been done or not. I think he last time satisfied the **Sherwood** points by saying he understood he would be responsible for certain portions of the trial. This time you're telling me that there would be no delay caused. I spent some time going over Doctor Richard Sena's report of July 27, 2004; Doctor Sena's report of May 28, 2004; Doctor Dwight Schuster's report of December 31st, 2002; Doctor Philip Coons's report of November 26th, 2002; Doctor Ned Masbaum's report of October 3, 2001; and Doctor Steven Berger's report of February 27, 2001; and finally Doctor Lance E. Trexler's report of February 23, 2000. Let me say that that—I think it was August of 2000 or so Judge Miller found Mr. Edwards to be incompetent, it was before I was presiding here. I think it was before Mr. Hollingsworth was assigned to this court, and we have so many reports—and this is not a complete list of the reports—we have so many reports because of findings prior to the prior, I'm sorry, reports prior to initial finding, then we have reports from a private doctor employed by the Public Defender agency,

Doctor Trexler; reports from Logansport doctors; re-reports from doctors Masbaum and Schuster. Each and every report where a mental state—I'm sorry, where a neurological exam was performed found either delusions, a delusional disorder of the grandiose type or schizophrenia of an undifferentiated type, that's (inaudible) one. Several of the reports refer to rambling writings as an indication of an inability to stay focused. The report upon which we relied in finding that Mr. Edwards was competent was the report of Doctor Robert Sena from July 27, 2004, from Logansport, still found that there was schizophrenia of an undifferentiated type; found that Mr. Edwards acknowledged his need for counsel; found that Mr. Edwards was able to plan a legal strategy in cooperation with his attorney. So I'm going to carve out a third exception and if I'm wrong we'll just—if I'm wrong and there's a conviction, we'll just try this case again but I think it requires more than just an understanding of **Sherwood** fifteen points; requires more than just a plan that doesn't cause a continuance. I think it requires abilities that exclude the doctors' findings, if you will. With these findings, he's competent to stand trial but I'm not going to find he's competent to defend himself. So the request to proceed *pro se* will be denied.

MR. EDWARDS: Objection, Your Honor.

THE COURT: Objection noted. Now are there any preliminary matters, Mr. Hollingsworth?

MR. HOLLINGSWORTH: If he's not going *pro se*, no.

THE COURT: Are there any . . .

MR. MCSHANE: I, I suppose I should probably just complete the record on this issue, Judge. I take exception to the Court's ruling. I don't believe that **Sherwood** allows for the Court to recognize the exception you just described on the record . . .

THE COURT: Actually I don't think **Sherwood** addresses that particular possibility. Tell you what, let me . . .

MR. MCSHANE: As I heard it, as I heard the Court's announcement of the ruling here, the Court's of the view that Mr. Edwards is competent to essentially cooperate with his lawyer and share in the responsibility in his defense to that extent, but not to do it on his own. I think . . .

MR. EDWARDS: Objection, Your Honor.

MR. MCSHANE: I think in discussing this issue, it does come up in **Sherwood**—excuse me, Judge.

DEFENSE COUNSEL CONFERS WITH DEFENDANT OFF THE RECORD

MR. MCSHANE: That in **Sherwood**, citing **McCaskey versus Wiggins**, a U.S. Supreme Court case from 1984, the Court indicates quote "the right to speak for one's self entails more than the opportunity to add one's voice to a cacophony of others" end quote. That's one of those five dollar words which I think is synonymous with like a chorus of others and I, I think really goes to the heart of the opportunity to represent one's self. It describes the singular nature of that right and truly, under the Bill of Rights, the personal character of that right. So I, with all due respect, would just make that statement in support of our continued position that Mr.

Edwards should be able to go forward representing himself alone in this case without what he perceives to be unwarranted interference from counsel that he disagrees with, but we only have a disagreement here and I think a disagreement in and of itself is not sufficient to deny Mr. Edwards' request. He's indicated to me again, Judge, that he wishes to address the Court.

MR. HOLLINGSWORTH: May I – I'm sorry.

THE COURT: The ruling's been made. Any other preliminary issues, Mr. McShane?

MR. MCSHANE: No, Your Honor.

THE COURT: Mr. Hollingsworth?

MR. HOLLINGSWORTH: I would just like to comment on the ruling myself, for the record.

THE COURT: Okay.

MR. HOLLINGSWORTH: I actually—I've had a dilemma because as a prosecutor, although partisan here, I am also concerned the defendant gets a fair trial and reading through the medical records on the defendant, seeing his conduct in court I don't know—I agree with you, sir, I don't know—that **Sherwood** truly addressed the issue of a seriously mentally ill defendant proceeding *pro se*. I don't know how that could be . . .

THE COURT: I'm sorry, let me interrupt, I forgot to mention, and Mr. McShane, I'm sorry, the voluminous writings shared with the Court by your client.

MR. MCSHANE: I have been provided copies of those.

THE COURT: Just keys into what some of the doctors were saying and if you'll remember, the finding of competence was conditioned by the doctors on the assistance of counsel.

MR. HOLLINGSWORTH: Yes.

THE COURT: So he's competent with counsel. Please proceed.

MR. HOLLINGSWORTH: I agree. I agree and I think, unfortunately I think justice would not be served in fairness to the defendant by his proceeding *pro se*. Clearly, his wish is not an intelligent one. Obviously this case will be scrutinized, possibly on appeal, but I think the Court has made the right decision to see that justice is done and hopefully this case will make a caveat to **Sherwood**. There's also some indication of not only mental illness but of some serious brain damage that defendant suffered about a decade ago in an automobile accident so that, I believe, has been documented. I can't recall the report. So I'm just, I'm agreeing with the Court, I think under the circumstance, justice is satisfied by him, by Your Honor's ruling. Thank you.

THE COURT: Okay.

MR. EDWARDS: Objection, Your Honor.

THE COURT: Objection is noted and from now on you have got to speak through your attorney, do you understand? We gave you a hearing on your intent, er, your desire to proceed by yourself and I've denied your request, so your attorney will speak for you from now on.

MR. EDWARDS: Well, Your Honor, I would like to address . . .

THE COURT: Yes or no, do you understand?

MR. EDWARDS: Under the First Amendment . . .

THE COURT: Do you understand?

MR. EDWARDS: Under the First Amendment I have a ri, ht to speak, Your Honor.

THE COURT: Do you understand what I said to you?

MR. EDWARDS: Your Honor . . .

THE COURT: Do you understand what I said to you?

MR. EDWARDS: Your Honor, I do understand but I would like to Constitutional right of the First Amendment . . .

THE COURT: We'll note your objection. Let's take a recess, then we'll get the jury questionnaires. In the meantime we'll take care of the rest of the morning calendar.

MR. MCSHANE: Judge, I have one more matter here.

THE COURT: Sure.

MR MCSHANE: Judge, I have one more matter here.

THE COURT: Sure.

MR. MCSHANE: I'm sorry, given what's transpired in the proceedings here, actually, I'll hold off on that.

THE COURT: Okay. If you feel the need to make a record, I'm willing to do that.

MR. MCSHANE: I don't need to right now.

THE COURT: Okay, then.

MR. MCSHANE: I, I would like to confer with Mr. Edwards here during the recess.

THE COURT: Good luck with that.

MR. MCSHANE: Yes, Judge.

PETITIONER'S BRIEF

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74pgs

(4)

No. 07-208

Supreme Court, U.S.
FILED
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IN THE

Supreme Court of the United States

STATE OF INDIANA,
Petitioner,

v.

AHMAD EDWARDS,
Respondent.

On Writ of Certiorari to the Supreme Court of Indiana

BRIEF FOR PETITIONER

Office of the Indiana
Attorney General
IGC South, Fifth Floor
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-6201
tom.fisher@atg.in.gov

** Counsel of Record*

STEVE CARTER
Attorney General
THOMAS M. FISHER*
Solicitor General
JULIE A. BRUBAKER
JUSTIN F. ROEBEL
HEATHER L. HAGAN
Deputy Attorneys General

Counsel for Petitioner

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QUESTION PRESENTED

May States adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?

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OPINIONS BELOW

The opinion of the Indiana Supreme Court is reported at *Edwards v. State*, 866 N.E.2d 252 (Ind. 2007). Pet.App. 1a-15a. The opinion of the Indiana Court of Appeals is reported at *Edwards v. State*, 854 N.E.2d 42 (Ind. Ct. App. 2006). Pet.App. 16a-31a. The trial court's decision holding that Respondent Ahmad Edwards was incompetent to represent himself at trial is unreported, but the relevant portion of the transcript is included in the Joint Appendix, J.A. 522a-532a.

JURISDICTION

The Indiana Supreme Court entered judgment in this case on May 17, 2007. The Petition for Writ of Certiorari was filed August 15, 2007, and granted December 7, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

1. On July 12, 1999, Respondent Ahmad Edwards was caught shoplifting at a department store in downtown Indianapolis. Pet.App. 2a. An unarmed store security guard chased Edwards onto the sidewalk and tackled him, but Edwards pulled a gun and shot the guard and a bystander (neither fatally) before fleeing to a nearby parking garage, where he, in turn, was shot and subdued by a passing FBI agent. Pet.App. 2a, 18a. The State charged Edwards with theft, criminal recklessness, aggravated battery, and attempted murder. Pet.App. 2a.

Following his arrest, Edwards made bizarre statements to the court, his counsel, and the press, which prompted inquiries as to his mental state. Comp. Tr. 2/02/00 at 17; J.A. 4a-6a, 13a-14a. The resulting tests and interviews by psychiatrists and psychologists ultimately led to findings on two separate occasions over three years apart that

Edwards was incompetent to stand trial. J.A. 48a-49a, 210a-211a, 365a.

Five years later, following four competency hearings, two commitments to the Indiana Department of Mental Health, and extensive therapy and treatment with the psychotropic drug Seroquel, Edwards regained sufficient mental competency to satisfy the standard of *Dusky v. United States*, 362 U.S. 402 (1960). J.A. 226a. Accordingly, Edwards received a two-day trial on June 27-28, 2005. Pet.App. 3a. At the last minute, he asked to proceed *pro se*, but the judge denied the request based "primarily on the fact that [Edwards] wanted to proceed under the defense of insanity and that that request would have caused a continuance." J.A. 524a. That denial is not at issue here.

The jury found Edwards guilty of theft and criminal recklessness, but hung on the attempted-murder and battery-with-a-deadly-weapon charges. Pet.App. 3a. The court remanded Edwards to the custody of the Marion County Jail and withheld sentencing pending retrial on the other charges, which the court set for December 19, 2005. Ed.App. 53, 59;[1] Trial Tr. 486.

Prior to the second trial, Edwards formally petitioned the court to proceed *pro se*. J.A. 279a-82a, 522a. While the court was satisfied that Edwards was waiving his right to counsel knowingly, voluntarily, and intelligently, it denied Edwards's motion. J.A. 527a. It found that, while Edwards

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[1] References to "Ed.App." are to Edwards's Appendix filed in the Indiana Court of Appeals.

was mentally competent to stand trial and to assist counsel, his delusions, schizophrenia, communication troubles, and related problems with focus rendered him incapable of self-representation. J.A. 526a-27a. The Court relied on Edwards's long history of incompetence and observed that the present "finding of competence was conditioned by the doctors on the assistance of counsel." J.A. 530a. This is the ruling at issue.

Edwards's second trial proceeded as scheduled on December 19, 2005. The jury convicted Edwards of attempted murder and battery with a deadly weapon. Pet.App. 3a. The court sentenced Edwards on all four convictions to the presumptive sentence for each count, running concurrently, for a total executed sentence of 30 years. Pet.App. 3a.

2. The findings and testimony of the mental-health professionals who have examined Edwards shed light on how it is that, while Edwards's mental impairments no longer render him incompetent to stand trial, they do render him incapable of representing himself.

After Edwards's public defender filed a motion for a competency hearing and a notice of intent to assert insanity as a defense, the court appointed Drs. Ned P. Masbaum and Dwight W. Schuster, both neuropsychiatrists, to examine Edwards. J.A. 15a. Drs. Masbaum and Schuster filed their reports in late December 1999 and testified to their findings at a competency hearing on February 2, 2000. J.A. 17a-27a, 347a. Both documented that Edwards suffered from delusional disorder "grandiose type,"

but concluded that, despite Edwards's delusions, he was competent to stand trial. J.A. 20a, 26a, 35a.

Dr. Schuster cited as evidence of Edwards's delusional disorder a news interview Edwards gave shortly after his arrest where he complained of an FBI conspiracy against him. Comp. Tr. 2/2/00 at 17. He further diagnosed Edwards with a learning disability "classified as a developmental and expressive writing disorder and expressive language disorder." J.A. 351a. This learning disability is exhibited "by his pattern of using erroneous and inappropriate sentences both verbally and in writing, but more marked in writing." J.A. 20a. In response to Dr. Schuster's examination questions, Edwards did not give direct answers but "went on and on in considerable detail and in a disconnected fashion" and "did go off on tangents." J.A. 353a. Dr. Masbaum agreed. J.A. 356a. Nonetheless, Dr. Schuster said that Edwards "is able to communicate with his attorney, although his delusional ideas may create some problems at times." J.A. 351a.

Edwards's counsel retained Dr. Lance E. Trexler, a neuropsychologist who serves as the Clinical Director for Neurological Rehabilitation at a network of Indianapolis hospitals. J.A. 108a, 357a. Dr. Trexler submitted a report on February 23, 2000, concluding that Edwards was not competent to stand trial because he displayed signs of a major thought disorder, decompensated during the course of conversations, and experienced hallucinations. J.A. 37a-38a. When the hearing resumed on August 16, 2000, Dr. Trexler explained that testing showed Edwards to have a severely impaired working

memory, which causes problems with mental focus and thought regulation. J.A. 354a.

Dr. Trexler also observed that "[o]n problem solving tasks, [Edwards] would develop the right strategy to solve a problem and then spontaneously forget or lose where it was he was going and end off in a different direction." J.A. 354a-60a. He said that Edwards was incapable of assisting in his defense because he was unable to "hold together one line of thinking for more than a few minutes." J.A. 362a. Further, while Edwards could learn and remember factual information, "the way in which he's able to use that decompensates very rapidly in anything less than a highly structured situation." J.A. 362a. Dr. Trexler also described Edwards's writings as "identical to his verbal behavior," meaning that they were "extraordinarily tangential, disorganized, randomly organized, grandiose and reflective of a thought disorder." J.A. 362a.

The court found Edwards incompetent to stand trial and committed him to the Indiana Department of Mental Health for evaluation and treatment. J.A. 48a-49a, 365a. Edwards was held at Logansport State Hospital, but there is no evidence that he received therapy or medication of any sort during this stay in that facility. Nonetheless, on March 14, 2001, Logansport State Hospital notified the trial court that Edwards "has attained the ability to understand the proceedings and assist in the preparation of his defense." J.A. 54-55a. Edwards was returned to Marion County Jail for trial.

On June 26, 2001, however, Edwards filed, without the assistance of his court-appointed

counsel, a document styled "Motion of Permissive Intervention." J.A. 69a-79a. Part A of this document began by stating, "In the year ["1999"] nineteen hundred and nindy nine. The defendant Mr. Ahmad Edwards applyed for a job in the fifth largest shopeing mall in Indiana." J.A. 69a. The document continued, "To relize the existence of a genuine issue as to an material fact by interrogatories of the county Marion in Indianapolis, Indiana to help cure the vital stictics, in witch negligence was being apoximated as the cause of the exacerbation of the young American citizens of the United States in Indianapolis, Indiana injury." J.A. 69a-70a.

In light of this "peculiar" motion, and mindful of Dr. Trexler's previous diagnosis of delusional disorder, on September 12, 2001, Edwards's counsel moved to release Edwards's Logansport State Hospital records in order to review the extent of his treatment and rehabilitation. Ed.App. 225-27. That same day, the trial court ordered further psychiatric testing by Drs. Masbaum and Schuster. Ed.App. 229, 284.

In a report filed in October 2001, Dr. Masbaum found that Edwards still suffered from a delusional disorder, but found he understood the charges and could aid his counsel. J.A. 84a-90a. Dr. Schuster found Edwards had shown significant improvement since being diagnosed as delusional in his previous evaluation, was able to understand the charges and proceedings, and was able to assist counsel with his defense. J.A. 107a-108a.

The doctors repeated their findings at a competency hearing on March 20, 2002. J.A. 386a, 396a. Dr. Schuster observed that Edwards's thinking was now much more logical, though still disjointed. J.A. 388a, 390a. Dr. Schuster observed that "Edwards does fluctuate in his presentation." J.A. 391a.

Dr. Trexler testified that Edwards still lacked competency due to his neurological problems, learning disabilities, and schizophrenia. J.A. 408a, 418a. He found Edwards's verbal and written communication to be tangential and disorganized. J.A. 416a. He said that Edwards was "doing his best to hold his thinking together but he has a formal thought disorder and despite his efforts, he therefore is usually incoherent and unable to hang on to one topic for longer than three to five seconds." J.A. 415a. According to Dr. Trexler, Edwards "gives inconsistent reports about what happened on the day of the crime." J.A. 433a.

Dr. Trexler acknowledged that defendants with "disorganized schizophrenia" might nonetheless be competent "to assist his or her counsel," but that "[i]t's a little less likely." J.A. 427a. He also explained how Edwards might respond to medication: "It's not going to go away, the underlying illness or disorder, but he would certainly have a much better chance for him to be able to collaborate with counsel . . . ." J.A. 425a.

Based on the reports and testimony, in April 2002, the trial court deemed Edwards competent and set a jury trial for September 30, 2002, J.A. 106a-

114a, but later continued it until December 2, 2002. Ed.App. 34.

Just before trial, in November 2002, defense counsel requested another competency examination, this time by Dr. Phillip Coons. J.A. 166a-68a. In a report dated November 26, 2002, Dr. Coons diagnosed Edwards as schizophrenic and noted Edwards's history of dyslexia and substance abuse. J.A. 157a-65a. Dr. Coons opined that Edwards could understand the charges, but was unable to assist with his defense due to schizophrenic delusions. J.A. 164a. Based on this report, on November 27, 2002, Edwards's counsel submitted a "Suggestion of Incompetency," claiming that Edwards was incapable of effective communication with counsel and that he lacked "an adequate understanding of the role of the parties to proceed to trial." J.A. 166a-68a.

The trial court vacated the December 2, 2002, trial. At a competency hearing on April 29, 2003, Drs. Schuster and Masbaum reiterated their findings that Edwards was competent to stand trial. J.A. 465a-66a; Comp. Tr. 4/29/03 at 21-23. Dr. Coons testified that Edwards suffered from schizophrenia and needed treatment through medication. J.A. 476a-484a. Dr. Trexler agreed with the schizophrenia diagnosis and noted that Edwards has a family history of schizophrenia. J.A. 492a. The court heard from Edwards's prior counsel that he failed to communicate effectively with Edwards regarding the case despite 15 attempts. J.A. 501a-02a. Edwards himself testified that he had trouble communicating and that he was willing to try medication. J.A. 505a-06a. Ultimately, the trial

court again found Edwards incompetent to stand trial and ordered him returned to the custody of the Indiana Department of Mental Health for evaluation and treatment. J.A. 206a-11a.

During Edwards's ensuing six-month stay at the Logansport State Hospital, the staff forensic psychiatrist observed that Edwards's schizophrenia included "symptoms of disorganized thought processes, delusional ideation, hallucinations, and ideas of reference." J.A. 223a. Edwards was treated for schizophrenia and a depressive disorder with individual and group psychotherapy, counseling, and 300 mg/day of Seroquel, an antipsychosis medication. J.A. 216a-17a, 229a-31a.

As a result of this treatment, on July 29, 2004, the Logansport State Hospital once again certified to the court that Edwards was competent to stand trial. J.A. 226a-27a. The Hospital found that Edwards "has attained the ability to understand the proceedings and assist in the preparation of his defense." J.A. 226a. The supporting report, by staff forensic psychiatrist Dr. Robert Sena, stated that Edwards's mental symptoms "have greatly improved" and that he "no longer has hallucinations, delusions, and ideas of reference." J.A. 231a. The doctor further observed, "His thought processes are no longer disorganized." J.A. 231a.

Edwards's trials proceeded without any further competency hearings.

3. Throughout this case, Edwards has provided attempts at oral communication along with prolific body of written work, both before and after Dr. Sena

declared him competent in July 2004, that demonstrate his profound lack of ability to communicate coherently or relevantly.

a. Edwards began creating this record shortly after he was arrested when he gave a television news interview in which he suggested he was the victim of an FBI conspiracy. Comp. Tr. 2/2/00 at 17. Dr. Schuster later characterized the interview as exemplary of "paranoid, delusional type of thinking." *Id.*

From jail, Edwards sent numerous writings to the trial court. His early correspondence includes a criticism of how people value money, complaints about services available for young people, plans for a "community based operation, that works for young disadvantage Americans under the age of twenty," and plans to be "a campaign supporter of governmental relations association." J.A. 4a-6a, 10a, 40a-47a.

At the August 16, 2000, competency hearing, Edwards brought into court a pile of "a couple thousand pages" which he wanted to read into the record. Comp. Tr. 8/16/00 at 32. His counsel referred to these documents as Edwards's "manifesto." J.A. 365a. According to Edwards, the document was "a concept for a program for the urban community." Comp. Tr. 8/16/00 at 32. Edwards explained, "Because of my dyslexia problem and the shocking, revealing information behind the psychoanalyzation I have taken to heart to want to help people in society that have this problem, that are not as verbally as complex as me." Comp. Tr. 8/16/00 at 32.

After his first commitment to the Logansport State Hospital, Edwards resumed his correspondence with the court. A purposeful "Motion to Dismiss and Discharge" was followed by a less coherent "Motion for Permissive Intervention," wherein Edwards appears to ask for his discharge as part of a class-action suit on behalf of a youth foundation of which he is president. J.A. 65a-83a. That later motion is accompanied by a letter to "Collective traditional class," wherein Edwards writes about his "own state-of-the art design aircraft," of being a "professor of class" at Harvard, and the success of his organization aimed at educating judges. J.A. 80a-83a.

At the competency hearing on March 20, 2002, Edwards repeatedly interrupted the proceedings, despite a warning that he must allow his counsel to speak for him. Comp. Tr. 3/20/02 at 19, 22, 32, 40, 43; J.A. 388a-89a, 397a-98a, 417a-18a. At one point, Edwards interrupted his counsel's examination of Dr. Schuster to inquire whether his counsel had a medical degree. J.A. 389a-90a.

Also at that hearing, the defense presented a document where Edwards attempted to write out his planned defense to the present charges. J.A. 416a, 452a-53a. The document stated, in part:

> Return come to see me for more cash flow because I recently zoomed an eight to six year plan to last.
>
> . . .
>
> I will not take the stand as an weapon in trial on behalf of a man standing trail with

> collections of any day caused by madness as to an crowd that included say "Wo"—He imposed us. And told fellows publicly "Hi-Mom".

J.A. 452a-53a.

Dr. Trexler also introduced a document where "Edwards was writing his thoughts about his circumstances." J.A. 440a. That 19-page document was titled "Instinctive Method for Glandular" and begins as follows:

> When an adequate supply of oxygen is not ensuring a particular regulation of blood pressure in the circulation of support, many billions of interconnecting cells of the brains larger more dominating general cerebral;

J.A. 455a. Dr. Trexler testified that this document showed Edwards's thought disorder, his inability to communicate, and the rambling nature of his thoughts. J.A. 441a.

Within days of the court's April 16, 2002, finding of competency to stand trial, Edwards sent numerous petitions and orders to the court regarding the propriety of the proceeding, a dress code, a request for continued treatment, and requests for documents from the clerk. J.A. 91a-105a, 115a-19a. In the following months, Edwards sent additional correspondence with equally inscrutable language. J.A. 120a-56a. Then, at the next competency hearing, on April 29, 2003, Edwards testified:

> I guess I, it's hard for me to communicate with anybody. I just, I'm not, I can't concentrate, I

> come out of concentration so easy. It's just not, nothing makes sense when I do, you know.

J.A. 505a. Edwards's former counsel, Mark Jones, described Edwards's oral communication skills as "tangential" and worse than his written communication where "he at least stays on task a little bit." J.A. 504a.

b. Dr. Sena submitted his report in July 2004, declaring Edwards competent. In that report, Dr. Sena said, "[Edwards's] thought processes are no longer disorganized." J.A. 231a. "He is demonstrating the abilities necessary to assist his attorney in his own defense, including good communication skills, cooperative attitude, average intelligence, and good cognitive functioning." J.A. 235a. During an interview on July 27, 2004, Dr. Sena observed that Edwards "shows good attention. His memory is good in all spheres (immediate, recent, and remote) . . . He communicates well . . . His speech is easy to understand . . . His thought processes are coherent . . . There is no evidence of present or recent hallucinations." J.A. 231a-32a.

After Edwards returned to the Marion County Jail, he filed two more requests for discharge pursuant to Indiana Criminal Rule 4(c), and two requests for hearings. J.A. 237a-40a, 246a-51a. On September 22, 2004, Edwards wrote two letters to the trial judge to inquire about the status of his motions. J.A. 241a-43a. One letter was a brief reminder that Edwards was awaiting a ruling:

> Dear Grant Hawkins:

> For days I have remained alert for the honor to be released for the execution of a right a 2001 discharge claim drew. Thank you for the moment.

J.A. 241a.

The second letter, however, is more tangential:

> Dear Honorable Judge:
>
> Hopeless! Is there an honest person in court, loyal to law? My court ask for fools to be freed and confidently not near me.
>
> Listen to this case; the foundations of my cause, the Criminal Rule 4. Courts territory acknowledged May 29, 2001 abandon for the young American citizen to bring a permissive intervention. Acting as the forces! To predict my future disgraced by the court to motion young Americans to gather against crime.
>
> My courts failure humiliated introductions kindly of right reason, and hope.

J.A. 242a. Edwards filed a handwritten copy of this second letter again a week later. J.A. 249a.

In a "Petition for Hearing," dated November 1, 2004, Edwards urged the court to:

> Consult, the best position to advise the groups of any, recourse that may be available established and to be action of law, certain of the rules admissions not to fail responsibilities

> of other officials, counterproductive resolved in the court system therein any action that might be construed as interference.

J.A. 250a-51a.

After his first trial, Edwards wrote a letter to the judge making confusing observations of the legal system, suggesting his trial attorney was intoxicated, and telling old jokes. J.A. 261a-62a. He also filed additional petitions for hearings, dismissal, and to proceed *pro se*. J.A. 263a-66a, 268a-300a, 326a-33a. In a "Motion to Dismiss," dated December 19, 2005, he wrote:

> Defendant moves the grounds of this court to dismiss this cause: if any notation of grand avoids a bill immunity proceeding at criminal information true-bill grounds. Defendant prays Psalm 15.5 for innocent of court property to be dismissed wherefore, so shall it be done.

J.A. 295a.

In a motion dated December 21, 2005, the final day of his second trial, Edwards again petitioned the Court for permission to proceed *pro se*. J.A. 300a-04a. In support of his request, Edwards claimed his decision was based on "a popular vote of class members." J.A. 301a. He also claimed to be "the founder of a faith-based group and director of 60 multimillion-dollar multistate class actions," and "a self-taught scholar of criminal, federal, civil, international constitutional, family, entertainment, and landlord law measuring 6 years." J.A. 301a. Edwards signed the petition as "Leading Publisher

of Ethnically Diverse Art, Director of Religious Faith Base Groups." J.A. 302a.

Following his second trial, Edwards wrote a statement regarding his version of the offense for inclusion in the pre-sentence investigation report, which begins as follows:

> The appointed motion of permissive intervention filed therein the court superior on, 6-26-01 caused a stay of action and apon it's expiration or thereafter three years are the plan to establish a youth program to and for the coordination of aspects of law enforcement to prevent and reduce crime amoung young people in Indiana became a diplomatic act as under the Safe Streets Act of 1967, "A Omnibuc considerate agent: I membered clients within the public and other that at/production of the courts actions showcased causes.

J.A. 324a-25a. Both the Indiana Court of Appeals and the Indiana Supreme Court reproduced that written statement in their opinions as evidence of Edwards's communication problems. Pet.App. 10a-11a, 23a.

4. As noted, despite Edwards's competency to stand trial, the trial court rejected Edwards's motion to represent himself based on Edwards's remaining trouble with focus and communication. J.A. 527a. At the *pro se* hearing, after recounting all the psychological testing reports, the judge noted that "[s]everal of the reports refer to rambling writings as an indication of an inability to stay focused." J.A. 527a. He specifically observed that "[t]he report

upon which we relied in finding that Mr. Edwards was competent was the report of Doctor Robert Sena from July 27, 2004, from Logansport, still found that there was schizophrenia of an undifferentiated type; found that Mr. Edwards acknowledged his need for counsel; found that Mr. Edwards was able to plan a legal strategy in cooperation with his attorney." J.A. 527a.

The trial court thus thought it necessary to go beyond the knowing-and-voluntary waiver inquiry to rule on Edwards' motion to proceed *pro se*. "So I'm going to carve out a third exception and if I'm wrong we'll just—if I'm wrong and there's a conviction, we'll just try this case again but I think it requires more than just an understanding of *Sherwood* fifteen points; requires more than just a plan that doesn't cause a continuance. I think it requires abilities that exclude the doctors' findings, if you will." J.A. 527a. Concluding, the court held that, "[w]ith these findings, he's competent to stand trial but I'm not going to find he's competent to defend himself. So the request to proceed *pro se* will be denied." J.A. 527a.

On appeal, the Indiana Court of Appeals reversed, concluding that *Godinez v. Moran*, 509 U.S. 389, 391 (1993), precludes going beyond the strict requirements of the Due Process Clause to override a defendant's request to represent himself. Pet.App. 17a, 24a. The Court of Appeals, however, stated, "We are entirely sympathetic to the conclusion reached by the trial court and appreciate that it was simply trying to ensure that Edwards received a fair trial." Pet.App. 24a.

On discretionary review, the Indiana Supreme Court likewise reversed Edwards's attempted-murder and aggravated-assault convictions because Edwards had the right to represent himself. Echoing the Court of Appeals, however, it too recognized that it was "at a minimum, reasonable" for the trial court to have found Edwards "incapable of adequate self-representation" and that the State's argument to deny that right in this case had "some force." Pet.App. 14a. In particular, the court acknowledged that *Martinez v. Court of Appeal*, 528 U.S. 152, 156 (2000), cast some doubt on *Faretta*'s rationale for the right to self-representation. Pet.App. 12a-13a (citing the concurring opinions of Justices Kennedy, Breyer, and Scalia). Regardless, it concluded that, because "neither *Martinez* nor any other Supreme Court decision has overruled *Faretta* or *Godinez*," the standard for competency to represent oneself can be nothing more than competency to stand trial. Pet.App. 13a.

SUMMARY OF THE ARGUMENT

It took over six years for Ahmad Edwards to achieve minimal competency to stand trial, and during that time he repeatedly demonstrated that he could not communicate with the court, orally or in writing, in a sustained coherent way. On that record, the trial court denied Edwards the right to represent himself at trial because providing him with a fair trial—one that actually offered a coherent defense—was more important than respecting his far more abstract demand for autonomy in the proceedings. In denying Edwards's motion to proceed *pro se*, the trial court required more competence for self-representation than for standing trial under *Dusky v. United States*, 362 U.S. 402, 402 (1960). The Court should hold that doing so was permissible under the circumstances.

The State respectfully proposes that the Sixth Amendment permits state trial courts to impose a higher standard of competency for self-representation than for standing trial, at least in the following limited way: *a trial court may deny a criminal defendant the right to represent himself at trial where the defendant cannot communicate coherently with the court or a jury.* This rule fits Sixth Amendment doctrine, which allows some balancing of interests when defendants attempt self-representation. If the Court concludes otherwise, it should reconsider that doctrine.

1. Refusing to allow a defendant who cannot communicate coherently to represent himself at trial does not violate the Sixth Amendment right found by *Faretta v. California*, 422 U.S. 806, 835 (1975),

because such a defendant cannot do what the right presumes he can, which is to communicate a defense to a court or jury. When a defendant chooses to stand trial rather than to plead guilty, that defendant is making the decision to persuade the court or jury of something, even if it is nothing more than the government's failure to make its case. Persuasion requires communication. If a mental or physical trait disables a defendant from communicating, the entire point of the trial is lost unless counsel speaks for the defendant. This is true regardless of the defendant's motive for choosing to represent himself at trial, whether it is because he believes he can present the best defense himself or because he is suspicious of government-provided counsel.

For a defendant who cannot communicate, in other words, waiving trial counsel is tantamount to waiving a fair trial in a way that it is not for a defendant who *can* communicate, but who may otherwise do a poor job of representing himself. In the latter case, the wisdom of the decision to undertake self-representation comes down to the quality of the defendant's own judgment, which is what *Faretta* requires courts to respect, rather than the ability to actuate that judgment, which is what the State's rule urged here is designed to address.

Furthermore, *Faretta* and its progeny allow courts to counterbalance the demand for self-representation with the need to preserve a fair trial and the court's institutional integrity. It is clear, for example, that a court may impose counsel on a defendant who is disruptive, and may impose standby counsel who takes an active role in the

proceedings on *any* defendant who demands self-representation. Even when it comes to the bedrock right of first-choice paid counsel, trial courts may disqualify counsel with a conflict of interest, even where the defendant objects, to protect the integrity of the proceedings. The rule urged by the State here fits within this line of cases.

The State's coherent-communication rule would also supplement in a critical way the requirement of *Dusky* that a defendant be able to consult with trial counsel. With respect to a defendant who will be represented by counsel, that inquiry from *Dusky* performs two functions. First, it is a proxy for measuring mental capacity to stand trial. Second, the requirement that the defendant be able to communicate with counsel also has the practical effect of ensuring that the trial will function properly as an adversarial test of the government's case (at least to a reasonable degree). To be sure, where a defendant demands self-representation, *Dusky* still serves as a proxy for minimal competence to stand trial. But it does not have a salutary practical impact on the conduct of the trial itself. The State's proposed coherent-communication rule provides a necessary alternative mode of assurance.

2. If the Court concludes that the rule proposed by the State is inconsistent with *Faretta*, it should consider overruling *Faretta*. As the dissenting opinions of Chief Justice Burger and Justice Blackmun in *Faretta* make clear, a right to self-representation is without solid textual, structural, or historical foundation. The despotic imposition of self-representation at common law that the Framers were determined to prevent, and the preservation of

the right to self-representation in the Judiciary Act of 1789, imply that the Sixth Amendment itself included no such right. Furthermore, cases from the United States that the Court relied on in *Faretta* hold only that the *Constitution* does not deprive the right of self-representation. They say nothing about whether trial courts may insist that defendants be represented by counsel.

Since *Faretta*, opinions of the Court and individual Justices have called it into question or eroded the underlying rationale of the holding that self-representation is a Sixth Amendment right. *See, e.g., Martinez v. Court of Appeal*, 528 U.S. 152, 163 (2000); *id.* at 164 (Kennedy, J., concurring); *id.* (Breyer, J., concurring); *id.* at 165 (Scalia, J., concurring in the judgment); *McKaskle v. Wiggins*, 465 U.S. 168, 187 (1984).

Finally, the development of ineffective-assistance-of-counsel doctrine since *Faretta* demonstrates that the essence of the Sixth Amendment guarantees lies in the *actual* provision of a defense at trial. *Faretta*'s focus on the abstract autonomy rights of the individual cannot be squared with the Court's current approach to the Sixth Amendment.

ARGUMENT

I. States Should Be Able to Deny Self-Representation to Otherwise Competent Defendants who Cannot Communicate with the Court Themselves

The law has long prohibited trying mentally and physically incompetent defendants, a rule that "is fundamental to an adversary system of justice." *Drope v. Missouri*, 420 U.S. 162, 172 (1975). Since *Dusky v. United States*, 362 U.S. 402, 402 (1960), competency to stand trial has meant only that a defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and a "rational as well as factual understanding of the proceedings against him." In *Faretta v. California*, 422 U.S. 806, 835 (1975), the Court held, in the case of a defendant who was "literate, competent, and understanding," that criminal defendants generally may insist on representing themselves at trial as long as their decisions are knowing and voluntary.

Later, in *Godinez v. Moran*, 509 U.S. 389 (1993), the Court "reject[ed] the notion that competence to . . . waive the right to counsel *must* be measured by a standard that is higher than (or even different from) the *Dusky* standard." *Id.* at 398 (emphasis added). The reason is that competence under *Dusky* has always been sufficient to waive constitutional criminal-procedure rights, and "the competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right*, not the competence to represent himself." *Id.* at 398-99. Thus, "a criminal defendant's ability to represent

himself has no bearing upon his competence to *choose* self-representation." *Id.* at 400.

The result is that courts may, consistent with the Due Process Clause, hold defendants found competent under *Dusky* to their waivers of counsel. But that does not mean that trial courts *must* respect those waivers in the first instance, irrespective of a defendant's actual competency for self-representation. Indeed, in *Godinez*, the Court observed, "States are free to adopt competency standards that are more elaborate than the *Dusky* formulation." *Id.* at 402. This freedom perforce includes the ability to adopt a "more elaborate" competency standard for waiver of counsel and, hence, self-representation. That is, a State can bring a defendant to trial, but require that he be represented by counsel, subject only to the reach of *Faretta*.

The issue, then, is whether *Faretta* permits a higher competency standard that precludes self-representation for a defendant who satisfies *Dusky*, but who cannot present a lucid defense. Indiana respectfully urges that the answer is "yes," at least according to the following rule: a *trial court may deny a criminal defendant the right to represent himself at trial where the defendant cannot communicate coherently with the court or a jury.*[2]

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[2] This test is substantially similar to that articulated by the Supreme Court of Wisconsin in *State v. Klessig*, 564 N.W.2d 716 (Wis. 1997), which held that denial of self-representation is permissible where "the defendant's education, literacy, fluency in English, and any physical or psychological disability . . . may significantly affect his

This proposed standard gets at the heart of what makes self-representation problematic for many (if not most) mentally impaired defendants: the inability to convey exculpatory evidence or theories to the court or a jury. At the same time, it does not depend on any formal medical or psychological diagnosis of the defendant. What counts are observations of the defendant, not, strictly speaking, the defendant's mental or physical diagnosis (though that diagnosis may well inform a court's determination). It therefore addresses the most problematic instances of self-representation—where a defendant's incoherence renders the trial farcical—yet protects the rights of competent defendants who, even if formally diagnosed with mental impairments, function at a sufficiently high level of coherence that their actions at trial, even if unskillful, will not patently undermine the fairness of the proceedings.

A. Permitting Competent but Mentally Impaired Defendants to Represent Themselves Often is Fundamentally Unfair and Threatens Societal Interests in Safeguarding Valid Verdicts

The criminal justice system, at a minimum, is supposed to be fair. *See Ford v. Wainwright*, 477 U.S. 399, 424 (1986) (Powell, J., concurring) ("[F]undamental fairness is the hallmark of the procedural protections afforded by the Due Process

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ability to communicate a possible defense to the jury." *Id.* at 724 (citation omitted). However, Indiana does not endorse any requirement that a defendant's inability to communicate be the result, strictly speaking, of "education, literacy, fluency in English, and any physical or psychological disability." *Id.*

Clause."). The right to fair and impartial judicial proceedings belongs not only to defendants, but also to society as a whole. *See Gannett Co. v. DePasquale*, 443 U.S. 368, 383 (1979) (recognizing society's "definite and concrete interest in seeing that justice is swiftly and fairly administered"). The guarantee of a fair trial "lie[s] at the base of all our civil and political institutions," *Malinski v. New York*, 324 U.S. 401, 414 (1945) (citation omitted), such that there is an "institutional interest in the rendition of just verdicts in criminal cases." *Wheat v. United States*, 486 U.S. 153, 160 (1988).

There is general agreement as to the fundamental components of a fair criminal trial, beginning with the textual guarantees of the Fifth and Sixth Amendments: the right against self-incrimination; the right to a speedy and public trial; the right to an impartial jury; the right to be tried locally; the right to notice of the accusation; the right to confront unfavorable witnesses (including through cross-examination); the right to compel favorable witnesses; and the right to assistance of counsel. U.S. Const. amend. V, VI.

In addition, several other rights and traditions have become fundamental to the overall fairness of the modern criminal trial "as we know it." *Faretta*, 422 U.S. at 818. These include telling one's side of the story through opening statements and closing arguments and objecting to the admissibility of the government's evidence. *See, e.g., Herring v. New York*, 422 U.S. 853, 858 (1975) ("[I]t has universally been held that counsel for the defense has a right to make a closing summation to the jury . . . ."); *California v. Green*, 399 U.S. 149, 158 (1970)

("[C]ross-examination [is] the greatest legal engine ever invented for the discovery of truth . . . .") (internal quotation omitted); *McNabb v. United States*, 318 U.S. 332, 346 (1943) ("[W]here . . . it appears that evidence has been obtained in . . . violation of legal rights . . . it is the duty of the trial court to entertain a motion for the exclusion of such evidence . . . ."); *United States v. Hershenow*, 680 F.2d 847, 858 (1st Cir. 1982) ("[P]rovided he confines himself to a discussion of what he hopes to show, a defendant in a criminal case has a right to make an opening [statement] . . . ."); *United States v. Wilson*, 488 F.2d 688, 691 (5th Cir. 1973) ("[A] defendant has a perfect right to object to testimony or evidence which he feels is inadmissible . . . . ."); *see also Patterson v. Illinois*, 487 U.S. 285, 300 n.13 (1988) ("[A]t trial, counsel is required to help even the most gifted layman adhere to the rules of procedure and evidence, comprehend the subtleties of *voir dire*, examine and cross-examine witnesses effectively (including the accused), object to improper prosecution questions, and much more.").

When trials feature these actions on the part of the defense, the public and the defendant alike have some assurance that the resulting verdict is fair and legitimate. When the defense does not utilize these tools, or does so only incoherently, such assurance is lacking and the validity and accuracy of the verdict become questionable. *See, e.g., Gardner v. Ozmint*, No. 06-28, __ F.3d __, 2007 WL 4414821, at *8 (4th Cir. Dec. 19, 2007) (holding that counsel's performance was constitutionally deficient for allowing introduction of co-defendant's pre-trial statements that related to potential racial motivation for the crime); *Miller v. Martin*, 481 F.3d

468, 473 (7th Cir. 2007) (holding counsel's performance at sentencing was constitutionally ineffective where counsel did not "offer a shred of mitigating evidence, object to . . . errors in the PSR, or even lobby for a sentence lower than the one urged by the State"); *Higgins v. Renico*, 470 F.3d 624, 632-33 (6th Cir. 2006) (counsel's failure to cross-examine prosecution's only eye witness was constitutionally deficient performance); *United States v. Theodore*, 468 F.3d 52, 55-57 (1st Cir. 2006) (holding performance constitutionally deficient where counsel failed to make a coherent opening statement and closing argument and struggled to examine witnesses and admit evidence); *Martin v. Grosshans*, 424 F.3d 588, 591-92 (7th Cir. 2005) (holding that counsel was constitutionally ineffective for failing to object to irrelevant and prejudicial testimony of prosecution witness and for failing to move for a mistrial based on inflammatory closing argument made by prosecutor); *Groseclose v. Bell*, 130 F.3d 1161, 1169 (6th Cir. 1997) (finding counsel's representation constitutionally ineffective due, in part, to "his failure to conduct any meaningful adversarial challenge, as shown by his failure to cross-examine more than half of the prosecution's witnesses, to object to any evidence, to put on any defense witnesses, to make a closing argument, and, at sentencing, to put on any meaningful mitigation evidence").

Pro se criminal trials often lack the hallmarks of fundamental fairness and generally "disrupt the criminal justice system to some degree." John F. Decker, *The Sixth Amendment Right to Shoot Oneself in the Foot: An Assessment of the Guarantee of Self-Representation Twenty Years after* Faretta, 6

Seton Hall Const. L.J. 483, 487 (1996). The Court has itself acknowledged that "[o]ur experience has taught us that 'a pro se defense is usually a bad defense.'" *Martinez v. Court of Appeal*, 528 U.S. 152, 161 (2000) (quoting Decker, 6 Seton Hall Const. L.J. at 598). In particular, where *pro se* defendants are unable to make relevant opening statements or closing arguments, to formulate coherent cross-examination questions, to compel the testimony of relevant and readily identifiable supporting witnesses, or to interpose lucid objections to government evidence, the fairness of the proceedings suffers dramatically.

Several trials featuring *pro se* defendants who obviously suffered mental impairments impacting their communication skills, or were otherwise unable to communicate effectively, demonstrate this point vividly:

• *Panetti v. Quarterman*, __ U.S. __, 127 S. Ct. 2842 (2007). After being found competent to stand trial for capital murder, Scott Panetti requested and was allowed to represent himself. *See Panetti*, Brief for Petitioner at 10-11. Among the other absurdities at the trial, Panetti asked the court "for over 200 subpoenas, including John F. Kennedy, the Pope, and Jesus." *Id.* at 11. Panetti also questioned prospective witnesses about nonsensical things such as belt buckles and assumed an alternate personality named "Sarge" when testifying. *See id.* at 13-14. He received the death penalty, but last term the Court vacated his sentence because it appeared an insane man was about to be executed. *See Panetti*, 127 S. Ct. at 2848.

- *O'Dell v. Thompson*, 502 U.S. 995 (1991) (Blackmun, J., statement respecting denial of certiorari). "Several times during the trial, the judge commented on O'Dell's inability to 'emotionally control' himself . . . and on one occasion informed O'Dell that his outbursts 'concern me as to whether you are in fact in need of a reevaluation.'" *Id.* at 996 (internal citations omitted). Despite this concern and the entreaties of standby counsel, the judge ultimately refused to order a reevaluation. *See id.* O'Dell was convicted of murder and sentenced to death. *See id.*

- *United States v. Gomez-Rosario*, 418 F.3d 90 (1st Cir. 2005). Before the trial began, while the defendant was represented by counsel, he filed dozens of *pro se* motions, "many of them long, confusing, contradictory, and devoid of merit." *Id.* at 96. He began the trial *pro se*, but when he was unable to make an opening statement, he allowed standby counsel to take over his representation for the remainder of the trial. *See id.* at 97-98.

- *United States v. Farhad*, 190 F.3d 1097 (9th Cir. 1999). Kashani Farhad was charged with mail fraud and false use of social-security numbers, *see id.* at 1098, and chose to represent himself at trial because he could, in his own words, "make a more glorious kind of defense." *Id.* at 1102 (Reinhardt, J., concurring). At trial, Farhad's poor command of the English language led him virtually to admit his own guilt during his opening statement. *See id.* at 1102. Farhad insisted on taking his own direct testimony, leading to questions that were "entirely unintelligible, irrelevant, or prejudicial to his own case." *Id.* at 1103. Farhad also failed to object at

critical points during the trial and ultimately asked the jury to find him guilty by returning "a true verdict, a just verdict, that the prosecution has proved its allegation." *Id.* at 1104-05.

• *People v. Houston*, No. A113505, 2007 WL 1519548 (Cal. Ct. App. May 25, 2007): After undergoing two competency evaluations, Houston, charged with possession of illegal substances in a prison facility, was permitted to proceed *pro se*. *See id.* at *1, *4. During his preliminary hearing, Houston accused the judge of violating his rights because the court had not filed his *pro se* documents, stating nonsensically, "But he doesn't want to hear my documents. I've presented myself by special invitation as a secured party/creditor. He's failing to answer these documents." *Id.* at *4. After the prosecution rested its case, Houston stated that he would "like to call the People of the State of California to the stand." *Id.* at *5. The court terminated Houston's self-representation after he refused to enter a plea. *See id.*

• *State v. Khaimov*, No. C4-97-2035, 1998 WL 747138 (Minn. Ct. App. Oct. 27, 1998): Defendant Khaim Khaimov was charged with aggravated robbery and burglary. *See id.* at *1. Various court-appointed psychiatrists reported that Khaimov was psychotic and suffered from a paranoid personality and possible mixed personality disorder, but that he was competent to stand trial. *See id.* Khaimov was permitted to proceed *pro se* with standby counsel. *See id.* At trial, Khaimov was "argumentative, asserted that he was the victim of a broad conspiracy, and insulted witnesses who gave unfavorable testimony (including his own

witnesses)." *Id.* His opening and closing statements rambled to the point where the court was forced to terminate them. *See id.* Khaimov was convicted on all counts. *See id.* at *2.

• Colin Ferguson, the Long Island Railroad killer, fired his lawyers for questioning his competence, and later told the jury that there was a 93-count indictment against him only because the crimes had occurred in 1993. *See* Decker, 6 Seton Hall Const. L.J. at 487 n.7. Ferguson's tactics at trial included proposing conspiracy theories, aggressively cross-examining the very victims he shot, insisting groups were "out to get him," and attempting to call former President Clinton and former New York Governor Mario Cuomo as witnesses. *See* Todd A. Pickles, *People v. Welch: A Missed Opportunity to Establish a Rational Rule of Competency to Waive the Assistance of Counsel*, 34 U.S.F. L. Rev. 603, 627-28 (2000).

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Defendants who cannot communicate coherently with the court or a jury effectively (but unintentionally) waive a *fair trial* when they demand a *counsel-free* trial. *See Martinez*, 528 U.S. at 161 n.9 (acknowledging this criticism of *Faretta*). The actions of such defendants defeat the point of having a trial at all, which is to subject the government's case to meaningful adversarial testing. A defendant who cannot communicate coherently over the course of a trial cannot accomplish this fundamental objective and is left only with the unlikely prospect that the government will unilaterally fail to prove its case—and that the court

will take note and dismiss the charges. *See Green*, 399 U.S. at 176 (Harlan, J., concurring) (The Sixth Amendment "constitutionalize[s] the right to a defense as we know it, a right not always enjoyed by the accused, whose only defense prior to the late 17th century was to argue that the prosecution had not completely proved its case.").

What is more, affording self-representation to those who cannot communicate often undermines the values of individual autonomy and dignity that supposedly underlie the right. *See McKaskle v. Wiggins*, 465 U.S. 168, 176-77 (1984). Self-representation in such circumstances often results in a *loss* of dignity for the defendant, not to mention for the criminal-justice system as a whole. A defendant who cannot meaningfully communicate with the court is hardly capable of presenting his "best possible defense." *Id.* at 177. Thus, "[t]o try, convict, and punish one so helpless to defend himself" may well "contravene[] fundamental principles of fairness and impugn[] the integrity of our criminal justice system," *Godinez*, 509 U.S. at 417 (Blackmun, J., dissenting), even though it does not violate the Due Process Clause.

B. Requiring Minimal Communication Skills Would Be Consistent with *Faretta*, Workable in Practice, and Effective at Screening the Most Problematic Self-Representation Demands

At least under the limited test Indiana proposes here, the adoption by a State of a higher standard for measuring competency to represent oneself than for measuring competency to stand trial would not run

afoul of the Sixth Amendment right found in *Faretta*. As described above, Indiana proposes that courts may deny the right of self-representation for defendants who cannot communicate coherently with the court or a jury. This test would be fundamentally consistent with *Faretta*, which implicitly presumes some ability to convey a defense to the fact finder, as well as practical and effective at preserving fair trials for mentally impaired defendants.

1. Denying self-representation to defendants who cannot communicate is consistent with *Faretta*

In *Faretta*, the Court held that a defendant has a right to self-representation and can waive counsel if he does so knowingly and voluntarily. *See Faretta*, 422 U.S. at 835. Although the Court acknowledged that "in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts," it held that the "right to defend is personal" and, therefore, the defendant "must be free personally to decide whether in his particular case counsel is to his advantage." *Id.* at 834. The Court explained that, although a defendant's choice of self-representation may be to his "detriment," a defendant must be free to "present his case" and "to make what statements he like[s]." *Id.* at 825, 834. Again, the Court described Faretta himself as "literate, competent, and understanding." *Id.* at 835.

The right to self-representation, however, like the right to counsel of one's choice, is not absolute. To begin with the latter, in *Wheat*, the Court held that

trial courts have broad discretion to refuse a defendant's waiver of conflict-free counsel when such waiver would "invite[] disrespect for the integrity of the court," or is "detrimental to the independent interest of the trial judge to be free from future attacks over the adequacy of the waiver or the fairness of the proceedings in his own court and the subtle problems implicating the defendant's comprehension of the waiver." *Wheat*, 486 U.S. at 162; *cf. Morris v. Slappy*, 461 U.S. 1, 11-12 (1983) (holding that first-choice counsel may be denied based on calendar conflicts).

Recently, in *United States v. Gonzalez-Lopez*, 548 U.S. 140, 126 S. Ct. 2557, 2565-66 (2006), the Court reaffirmed this broad discretion to reject first-choice paid counsel notwithstanding its holding that a concededly erroneous deprivation of first-choice counsel requires a new trial even without a showing of prejudice. The Court's reaffirmation of limits on the right to first-choice counsel supports the State's point here: "We have recognized a trial court's wide latitude in *balancing the right to counsel of choice against the needs of fairness* . . . ." *Id.* (emphasis added). Thus, while the Sixth Amendment's guarantee of the right to counsel precludes any need for a defendant to show that its improper deprivation actually caused an unfair trial, that does not mean that a trial judge's concerns for overall fairness are irrelevant. "It is one thing to conclude that the right to counsel of choice may be limited by the need for fair trial, but quite another to say that the right does not exist unless its denial renders the trial unfair." *Id.* at 2563 n.3.

Here, the trial judge reasonably applied the former precept: that the right to self-representation may be limited by the need for a fair trial. This is consistent not only with cases applying the right to first-choice counsel, but also with *Faretta* and other self-representation cases. In *Faretta*, the Court stated that a "trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct." *Faretta*, 422 U.S. at 834 n.46. The Court also cautioned that "[t]he right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." *Id.* Accordingly, "the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." *Martinez*, 528 U.S. at 162.

Furthermore, none of the cases that *Faretta* relied on to find a right of self-representation featured a defendant who could not communicate coherently.[3] Indeed, in *Massey v. Moore*, 348 U.S.

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[3] *See Moore v. Michigan*, 355 U.S. 155, 158-59 (1957); *Price v. Johnston*, 334 U.S. 266, 272-73 (1948); *Carter v. Illinois*, 329 U.S. 173, 177 (1946); *Adams v. United States ex rel. McCann*, 317 U.S. 269, 270-71 (1942); *Snyder v. Massachusetts*, 291 U.S. 97, 109 (1934); *United States ex rel. Maldonado v. Denno*, 348 F.2d 12, 15 (2d Cir. 1965); *United States v. Plattner*, 330 F.2d 271, 277 (2d Cir. 1964); *MacKenna v. Ellis*, 263 F.2d 35, 37-38 (5th Cir. 1959); *United States v. Sternman*, 415 F.2d 1165, 1167 (6th Cir. 1969); *Lowe v. United States*, 418 F.2d 100, 102 n.4 (7th Cir. 1969); *United States v. Warner*, 428 F.2d 730, 733-34 (8th Cir. 1970); *Haslam v. United States*, 431 F.2d 362, 365 (9th Cir. 1970); *United States v. Dougherty*,

105, 108 (1954), the Court expressly observed that "[w]e have not allowed convictions to stand if the accused stood trial without benefit of counsel and yet was so unskilled, so ignorant, or so mentally deficient as not to be able to comprehend the legal issues involved in his defense."

Consistent with these countervailing judicial interests, the Court has already delineated limits on the right of self-representation. Even before *Faretta*, in *Illinois v. Allen*, 397 U.S. 337, 343 (1970), the Court upheld a trial court's decision to eject a self-represented defendant from the courtroom when he

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473 F.2d 1113, 1118 (D.C. Cir. 1972); *Lockard v. State*, 451 P.2d 1014, 1019-20 (Idaho 1969); *People v. Nelson*, 268 N.E.2d 2, 4 (Ill. 1971); *Blanton v. State*, 98 N.E.2d 186, 187 (Ind. 1951); *Westberry v. State*, 254 A.2d 44, 44 (Me. 1969); *Allen v. Commonwealth*, 87 N.E.2d 192, 193 (Mass. 1949); *People v. Haddad*, 11 N.W.2d 240, 243 (Mich. 1943); *State v. McGhee*, 167 N.W.2d 765, 768 (Neb. 1969); *Zasada v. State*, 89 A.2d 45, 46 (N.J. 1952); *People v. McLaughlin*, 53 N.E.2d 356, 357 (N.Y. 1944); *State v. Mems*, 190 S.E.2d 164, 172 (N.C. 1972); *State v. Pritchard*, 41 S.E.2d 287, 287 (N.C. 1947); *State v. Hollman*, 102 S.E.2d 873, 875 (S.C. 1958), *overruled on other grounds by Stevenson v. State*, 516 S.E.2d 434 (S.C. 1999); *State v. Thomlinson*, 100 N.W.2d 121, 122 (S.D. 1960); *State v. Penderville*, 272 P.2d 195, 198-99 (Utah 1954); *Mackreth v. Wilson*, 15 So.2d 112, 113 (Ala. Ct. App. 1943); *Cappetta v. State*, 204 So.2d 913, 916 (Fla. Dist. Ct. App. 1967), *rev'd on other grounds*, 216 So.2d 749 (Fla. 1968); *State v. Verna*, 498 P.2d 793, 796 n.1 (Or. Ct. App. 1972); *State v. Woodall*, 491 P.2d 680, 682 (Wash. Ct. App. 1971); *Rex v. Woodward*, 170 L.T.R. (n.s.) 296, 296 (Ct. Crim. App. 1944); *R. v. Maybury*, 11 L.T.R. (n.s.) 566, 566 (Q.B. 1865); *The Trial of William Penn and William Mead*, 6 How. St. Tr. 951, 955 (1670).

"insist[ed] on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom." In doing so, the Court stressed that "[i]t is essential to the proper administration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country." *Id.*; *see also Mayberry v. Pennsylvania*, 400 U.S. 455, 468 (1971) (Burger, C.J., concurring) ("In every trial there is more at stake than just the interests of the accused; the integrity of the process warrants a trial judge's exercising his discretion to have counsel participate in the defense even when rejected."). *Faretta* cited *Allen* with approval, so there is no reason to believe that its holding and reasoning do not survive. *See Faretta*, 422 U.S. at 834 n.46.

The Court has continued to recognize limits on self-representation after *Faretta*. *See Martinez*, 528 U.S. at 163 (holding that there is no right to self-representation on direct appeal); *McKaskle*, 465 U.S. at 187-88 (holding that a trial court may appoint standby counsel over a self-represented defendant's objection). *McKaskle* is particularly noteworthy because the Court expressly balanced the individual defendant's interest in self-representation against the societal and institutional interest in ensuring fair adversarial proceedings. *See McKaskle*, 465 U.S. at 182-87. Standby counsel could be imposed as long as the defendant was not deprived of his right to have his voice heard and was "allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in voir dire, to question witnesses, and to address the court and the jury at appropriate points in the trial." *Id.* at 174.

With respect to this latter point, it is significant that each of the actions that *McKaskle* said a *pro se* defendant is entitled to perform requires some minimal ability to communicate with the court and jury. For defendants lacking this ability, self-representation will result in the loss of fundamental fairness, regardless of the presence of standby counsel. *See Farhad*, 190 F.3d at 1102-05 (Reinhardt, J., concurring) (describing a *pro se* defendant's refusal to allow standby counsel to assist, even as he struggled with conducting voir dire, questioning witnesses, making motions, and arguing his theory of the case).

The basis for denying self-representation in this case—that Edwards's inability to communicate coherently would deprive him of a fair trial—fits comfortably within the legitimate interests the Court has used to counterbalance Sixth Amendment representational rights in the past. The Court in *Wheat* balanced the fair-trial impact of proceeding without *conflict-free* counsel against the right to counsel for a defendant who could afford his own lawyer. The Court in *McKaskle* balanced the fair-trial impact of proceeding without *standby* counsel against the right of self-representation for a defendant who could communicate coherently. In this case, it should balance the fair-trial impact of going forward without *full-blown* defense counsel against the right of self-representation for a defendant who *cannot* communicate coherently. The State's profound interests in providing a fair trial dramatically outweigh an incoherent (but legally competent) defendant's far more limited and personal interest in acting as his own lawyer.

This counterbalance remains notwithstanding any suspicions a defendant may have about the loyalties of state-appointed defense counsel. The Court in *Faretta* worried that, "where the defendant will not voluntarily accept representation by counsel, the potential advantage of a lawyer's training and experience can be realized, if at all, only imperfectly." *Faretta*, 422 U.S. at 834. The reason for such imperfect realization, the Court said, is that "[t]o force a lawyer on a defendant can only lead him to believe that the law contrives against him." *Id.*

Just as this concern does not preclude denying self-representation to a defendant who does not communicate *peacefully*, so it should not prevent it here, where the defendant does not communicate *coherently*. More fundamentally, in this circumstance, a "lawyer's training and experience" cannot be characterized as merely a "potential advantage." It is in fact the *only* way to "realize" a defense, even if it does so "imperfectly" because of the defendant's suspicions. Besides, the Sixth Amendment is now understood to ensure minimally skillful state-provided representation, a rule that did not exist when *Faretta* was decided. *See Strickland v. Washington*, 466 U.S. 668, 683 (1984).

2. A communication-skills rule echoes *Dusky*, and can be implemented readily without threatening core Sixth Amendment rights

The rule proposed by the State is not only consistent with *Faretta*, but also echoes the low, yet meaningful, threshold of bare competency to stand trial with assistance of counsel. *Dusky* focuses in part on the defendant's "ability to consult with his

lawyer." *Dusky*, 362 U.S. at 402. This inquiry requires that the defendant possess only minimal ability to communicate with his lawyer; critically, it presumes that the lawyer will, in turn, communicate with the court on the defendant's behalf. *See Godinez*, 509 U.S. at 412-13 (Blackmun, J., dissenting) ("A finding that a defendant is competent to stand trial establishes only that he is capable of aiding his attorney in making the critical decisions required at trial or in plea negotiations. The reliability or even relevance of such a finding vanishes when its basic premise—that counsel will be present—ceases to exist."); *see also* J.A. 530a (holding in this case that the "finding of competence was conditioned by the doctors on the assistance of counsel").

It follows that if a defendant chooses to dispense with his lawyer and elects self-representation, a proper concern may be whether the defendant himself has the ability to communicate with the court. The communication skills required are not exceptional. This standard does not contravene *Faretta* by requiring a defendant to "have the skill and experience of a lawyer" in order to choose self-representation. *See Faretta*, 422 U.S. at 835. But it does require that the defendant be able to ask relevant questions of witnesses and string together coherent and relevant statements regarding his innocence or the government's failure to prove its case.

Courts should have no trouble deciding whether criminal defendants can communicate coherently with the court or the jury. *Faretta* already requires that a defendant's clear and unequivocal assertion of

a desire to represent himself be followed by a hearing where the judge warns of the dangers of self-representation. *See Faretta*, 422 U.S. at 835. A *Faretta* hearing could also serve as an opportunity—if one has not already arisen—for the judge to determine if the defendant has the minimal skills to communicate coherently with the court and the jury in a narrative fashion. The judge could base a determination on evidence adduced at the hearing as well as on the defendant's previous on-the-record communications (oral or written) with the court. Appellate courts will have no less ability to review this sort of record than they ordinarily do to review a waiver of counsel.

Nor would the proposed rule duplicate the knowing-voluntary-and-intelligent-waiver inquiry already required. This inquiry does not suffice because in *Godinez* the Court observed that it is directed simply at "determin[ing] whether the defendant actually *does* understand the significance and consequences of a particular decision and whether the decision is uncoerced." *Godinez*, 509 U.S. at 401 n.12. It is readily apparent that a defendant can satisfy that test, yet still be unable to communicate a defense coherently to the court and jury.

C. Edwards Repeatedly Demonstrated that He Could Not Communicate with the Court in any Sustained, Cogent Manner

Throughout his nearly six years in state custody awaiting trial—either in the Marion County Jail or at Logansport State Hospital—Edwards demonstrated a fundamental inability to

communicate lucidly with the court—and, at times, even with his lawyer. His communication deficiencies twice scuttled his trial under the minimal *Dusky* competency standard. J.A. 48a-49a, 206a-09a. Edwards regained enough cognition to consult with his lawyer, but not nearly enough to communicate coherently with the court or a jury. In rejecting Edwards's motion to proceed *pro se*, the trial court was concerned in particular that "[s]everal of the reports refer to rambling writings as an indication of an inability to stay focused." J.A. 527a.

Edwards has been consistently diagnosed with an expressive writing disorder and an expressive language disorder, which demonstrate his inability to convey his thoughts. His privately retained doctor, Dr. Trexler, found "severely impaired . . . working memory, meaning keeping focused and regulating what it is that you are thinking about." J.A. 359a. The doctor explained, "he's doing his best to hold his thinking together but he has a formal thought disorder and despite his efforts, he therefore is usually incoherent and unable to hang on to one topic for longer than three to five seconds." J.A. 415a. "On problem solving tasks, [Edwards] would develop the right strategy to solve a problem and then spontaneously forget or lose where it was he was going and end off in a different direction." J.A. 359a-60a.

This inability to retain and carry through a thought process was clearly demonstrated when Dr. Trexler asked Edwards to write "what his plan for defense was and how that would be successful." J.A. 416a. Defendant's response began as follows:

> Return come to see me for more cash flow because I recently zoomed an eight to six year plan last.
>
> Rather state such factors I group for the largest mixed complaint; to become an observer of an free agent of series where he can raise my hand as support for an team with absolutely no Indiana-in's but myself to blame for the winds.

J.A. 452a.

Edwards's inability to communicate coherently did not change even with Dr. Sena's observation that his "thought processes are no longer disorganized." J.A. 231a. Edwards's correspondence and pleadings to the court following that report still demonstrated confusion, delusions, and an inability to present cogent thoughts. J.A. 246a-51a, 258a-62a, 268a-78a.[4] On December 15, 2005, only four days prior to

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[4] Petitioner's Reply in Support of the Petition quoted a paragraph of Edwards's confused writing filed on August 30, 2005. *See* Pet. Reply Br. at 12. This submission appeared in Edwards's own state-court appendix. However, it now appears the quoted language was on the back of Edwards's filing and relates to another case, though it nonetheless demonstrates Edwards's disjointed thought process. Other filings that same day also demonstrate his inability to communicate even after being declared competent by Dr. Sena:

> Defendant could not violate contracts a petition groups at all instances was merged. Then the set defendant achieved to become stronger at the trial courts post trial rules yet could not offer habilitation or attribute to the courts request for petitioners relief there of its veil of trust.

the trial, Edwards wrote an incomprehensible letter to the judge, which stated, in part:

> Try to do your best old man to isolate the young boy in me at this. The defence helps me face my lodge for our 35th degree we call it the passing of the hands to the thumb. And it is very important to me to work again for my family lodge.
>
> You looked good doing it your-self when the state starts offsetting the courts and you show then to keep the rule and thereby the record their heads-up.
>
> . . .
>
> Thank you for your pursued degrees affects, The Defendant Ahmad Edwards

J.A. 283a. At the second trial, Edwards raised several objections despite representation by counsel and admonishments by the court. J.A. 523a, 525a, 527a, 528a, 530a; Trial Tr. 62. Then, in a written request to proceed *pro se* filed at the conclusion of the second trial, Edwards claimed his request was based on "a popular vote of class members" and claimed to have vast legal education and experience. J.A. 301a.

> Petitioner requested no such order be to defendant the method defendant's corporate defendant is obviously frivolous and or absurd. Vexation was caused on the petitioner after defendant's therapeutic treatment.

J.A. 258a-59a.

However, other filings and statements during this time illustrate that Edwards had at least a basic understanding of the proceedings and could assist his counsel. J.A. 238a-40a, 244a-45a, 270a-74a, 279a. For example, he filed two coherent requests for discharge pursuant to Indiana Criminal Rule 4(c), a request for a hearing, and requests for documents from the clerk. J.A. 244a-48a, 250a. The first request for discharge was rough, but logical:

> Mr. Ahmad Edwards the accused must be brought to trial under subdivision c of the criminal procedure in one year or so held be discharged. A charge against him filed July 15, 1999[.] A period of two years passed befor he filed a motion to dismiss criminal charges and discharge the defendant by criminal rule 4.c on May 29, 2001[.] Now he is requesting the court to take notice of his motion to dismiss and discharge, three years later.

J.A. 238a. He was also able to explain to his counsel that he would present a theory of self-defense. J.A. 524a-25a.

Thus, while Edwards amply demonstrated that he *could not* communicate coherently with the court (or conform to courtroom rules and procedures), he also demonstrated that he understood the proceedings and *could* assist his lawyer, as *Dusky* requires for legal competence. Indiana's suggested rule would allow States to insist on a fair trial for defendants such as Edwards where justice could be thwarted by a *pro se* defendant's inability to communicate.

II. If *Faretta* Precludes Denial of Self-Representation to Competent but Unintelligible Defendants, the Court Should Overrule *Faretta*

Allowing criminal courts to override demands for self-representation by defendants who cannot communicate effectively with the court or jury should provide a workable method for protecting fair trials that is consistent with *Faretta*. If, however, the Court views *Faretta* as being sufficiently broad or absolute that it precludes denying self-representation to defendants such as Edwards, the Court should reconsider *Faretta* itself. Doing so would fit within the Court's established criteria for revisiting its precedents: *Faretta* has never rested on doctrinally solid footing, its central rationale has slowly eroded over the years, and self-representation is not a right that citizens use to structure their lives based on settled expectations about the law. *Cf. Dickerson v. United States*, 530 U.S. 428, 442 (2000).

A. *Faretta* is Textually and Historically Unsound

1. *Faretta* is a profoundly fractured 6-3 decision that rests a non-textual Sixth Amendment right to self-representation on grounds that appear increasingly shaky.

a. Nearly a decade before *Faretta*, in *Singer v. United States*, 380 U.S. 24, 34-35 (1965), the Court *rejected* a non-textual Sixth Amendment right to waive a jury trial because "[t]he ability to waive a constitutional right does not ordinarily carry with it the right to insist upon the opposite of that right."

Thus, while a defendant may waive the rights to be confronted with witnesses against him, to be tried in the district where the offense was committed, to have a speedy and public trial, or to have a trial at all, for example, there is no correlative right to *avoid* being confronted with witnesses, to demand a change in venue, to be tried in private several years hence, or even to plead guilty. *See id.* at 35; *see also North Carolina v. Alford*, 400 U.S. 25, 38 n.11 (1970) ("A criminal defendant does not have an absolute right under the Constitution to have his guilty plea accepted by the court . . . .").

b. The Court in *Faretta* ostensibly acknowledged and accepted this principle from *Singer*. *See Faretta v. California*, 422 U.S. 806, 820 (1975). Thus lacking a textual source for the right to waive counsel, either express or implied, the Court looked to history and the structure of the Sixth Amendment for guidance. *See id.* at 818-32. It inferred an affirmative right of self-representation from a supposed historical aversion to compulsory counsel, from the right to self-representation provided by the Judiciary Act of 1789 and state codes of the period, from the personal nature of Sixth Amendment rights generally, and from its understanding of what it more broadly means to "enjoy the right . . . to have Assistance of Counsel." *See id.*

c. In dissent, Chief Justice Burger, joined by Justices Blackmun and Rehnquist, argued that the decision contradicted the text of the Sixth Amendment, was inconsistent with settled precedent, and, ultimately, was "another example of the judicial tendency to constitutionalize what is

thought 'good.'" *Id.* at 836 (Burger, C.J., dissenting). He observed that this desire to do good "fails on its own terms . . . because there is nothing desirable or useful in permitting every accused person, even the most uneducated and inexperienced, to insist upon conducting his own defense to criminal charges." *Id.* The risk of fundamental unfairness multiplies where a defendant is "'ignorant and illiterate,'" of "'feeble intellect,'" or suffers from severe thought and language disorders that make it impossible to communicate a defense to a jury. *See id.* at 839. The resulting inequity ultimately undermines "the integrity of and public confidence in the system." *Id.*

Moreover, said the Chief Justice, the majority's originalist argument got the historical lessons wrong. *See id.* at 843-45. While Section 35 of the Judiciary Act of 1789 "provided a statutory right to self-representation in federal criminal trials," that fact cut *against* the majority's conclusion. *See id.* at 844. That is because "[t]he text of the Sixth Amendment, which expressly provides only for a right to counsel, was proposed the day after the Judiciary Act was signed," and "inclusion of the right in the Judiciary Act and its omission from the constitutional amendment drafted at the same time by many of the same men, supports the conclusion that the omission was intentional." *Id.*

d. In a separate dissent, Justice Blackmun voiced similar concerns over the accuracy of the Court's inferences from the Judiciary Act of 1789. *See id.* at 850-51 (Blackmun, J., dissenting). He also pointed out two obvious flaws in the Court's use of English history. *See id.* at 846-51. First, the abuses of counsel at the Star Chamber, where a defendant

could make no pleading without signature of counsel, who himself was accountable to the crown (often on pain of imprisonment) for inaccurate averments of the defendant, *see id.* at 422 U.S. at 822 n.18 (majority opinion), are shielded by the textual right to counsel insofar as it guarantees a right to *effective* assistance of counsel. *See id.* at 848 (Blackmun, J., dissenting). "For . . . overbearing conduct by counsel, there is a remedy." *Id.* (citing *Brookhart v. Janis*, 384 U.S. 1 (1966)). For example, in *Brookhart*, the Court reversed three guilty-plea convictions where counsel overrode the defendant's expressed desire to plead not guilty. *See Brookhart*, 384 U.S. at 7-8.

Second, the "'common law shuddered at the idea of any person testifying who had the least interest.'" *Ferguson v. Georgia*, 365 U.S. 570, 574 (1961); *see also Faretta*, 422 U.S. at 850-51 (Blackmun, J., dissenting). Accordingly, "until the middle of the 19th century, the defendant in a criminal proceeding in this country was almost always disqualified from testifying as a witness because of his 'interest' in the outcome." *Id.* at 850-51 (citing *Ferguson*, 365 U.S. at 575-77). This is significant because "the ability to defend 'in person' was frequently the defendant's only chance to present his side of the case to the judge or jury." *Faretta*, 422 U.S. at 851 (Blackmun, J., dissenting). Accordingly, "[w]ith the abolition of the common-law disqualification, the right to appear 'in person' . . . lost most, if not all, of its original importance." *Id.* at 851.

2. The Court's reliance on common law was fundamentally flawed also because, outside the Star Chamber (where defense counsel was essentially a

tool of the crown), defendants had no right to counsel whatever in many English trials. *See* Timothy P. O'Neil, *Vindicating the Defendant's Constitutional Right to Testify at Criminal Trial: The Need for an On-the-Record Waiver*, 51 U. Pitt. L. Rev. 809, 811 (1990). Defendants appeared before the court and personally responded to accusations without the benefit of counsel, or even evidence. *See Faretta*, 422 U.S. at 823-24. Self-representation was, therefore, a burdensome necessity—a crippling disadvantage imposed by a dictatorial regime committed to convictions rather than justice. The right to present a defense with evidence and counsel was not generally recognized in England until the Treason Act of 1695. *See id.* at 824. Counsel was not allowed in *all* felony prosecutions in England until 1836. *See id.* at 825.[5]

The Court has recognized that injustices arise when criminal defendants fend for themselves, and has, accordingly, applied the Sixth Amendment's right to counsel ever more expansively. *See id.* at 851 (Blackmun, J., dissenting). In *Powell v. Alabama*, 287 U.S 45, 71-73 (1932), the Court held that defendants in capital cases were entitled to the assistance of paid counsel. In *Gideon v. Wainwright*, 372 U.S. 335, 342-45 (1963), the Court ruled that defendants in felony cases who cannot afford paid counsel have a right to state-appointed counsel. In *Argersinger v. Hamlin*, 407 U.S. 25, 36 (1972), the Court ruled that *all* defendants facing a term of

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[5] For a more detailed discussion of the historical evolution of the right to counsel, and its significance for the right to self-representation, *see Faretta*, Brief of Respondent at 17-25, *available at* 1974 WL 186114.

imprisonment must be provided counsel, regardless of the severity of the charges. Just recently, in *United States v. Gonzalez-Lopez*, 548 U.S. 140, 126 S. Ct. 2557, 2563-65 (2006), the Court buttressed the right to first-choice paid counsel by reaffirming that improper denial constitutes structural error. *See also Massey v. Moore*, 348 U.S. 105, 108 (1954) ("We have not allowed convictions to stand if the accused stood trial without benefit of counsel and yet was so unskilled, so ignorant, or so mentally deficient as not to be able to comprehend the legal issues involved in his defense.").

As constitutionally mandated access to counsel has expanded, any rationale for guaranteed self-representation has vanished. The despotic tradition of leaving defendants to their own devices before the oppressive crown cannot logically be twisted into a self-abnegating constitutional *right* to a similar procedure in the United States.

3. *Faretta* also lacks support from American judicial precedent. The Court in *Faretta* purported to trace the protection of self-representation backward through case law, *Faretta*, 422 U.S. at 814-17, but not one Supreme Court case it cited involved a defendant who requested, but was denied, self-representation. *See id.* The leading prior Supreme Court decision merely analyzed a defendant's competence to waive a jury trial without counsel and held only that "[t]here is nothing in the Constitution to prevent an accused from choosing to have his fate tried before a judge without a jury even though, in deciding what is best for himself, he follows the guidance of his own wisdom and not that of a lawyer." *Adams v. United States ex rel.*

McCann, 317 U.S. 269, 275 (1942). But just because the *Constitution* permits such a waiver, that does not mean that a State must do the same.[6] *Compare id.* at 276 ("The Constitution does not compel an accused who admits his guilt to stand trial against his own wishes.") *with Alford*, 400 U.S. at 38 n.11 (finding no absolute right to plead guilty).

Adams did include the dictum that "to deny [a criminal defendant] in the exercise of his free choice the right to dispense with some [Sixth Amendment] safeguards . . . and to base such denial on an arbitrary rule . . . is to imprison a man in his privileges and call it the Constitution." *Adams*, 317 U.S. at 280. But if this was intended to mean that each Sixth Amendment right includes a corollary right to its opposite, that principle was later rejected in *Singer*, which *Faretta* itself purported to uphold. *See Faretta*, 422 U.S. at 820.

In two other cases, similarly, the Court acknowledged that the Constitution does not require a defendant to have counsel, but it said nothing about a State's ability to require it. *See Moore v. Michigan*, 355 U.S. 155, 161 (1957) (overturning *pro se* defendant's conviction); *Carter v. Illinois*, 329 U.S.

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[6] Many of the lower federal-court cases cited in *Faretta* similarly relied on *Adams* to find a constitutional right to self-representation. *See United States ex rel. Maldonado v. Denno*, 348 F.2d 12, 15 (2nd Cir. 1965); *MacKenna v. Ellis*, 263 F.2d 35, 41 & n.4 (5th Cir. 1959); *United States v. Sternman*, 415 F.2d 1165, 1169-70 (6th Cir. 1969); *United State v. Warner*, 428 F.2d 730, 733 (8th Cir. 1970). Only one contained any kind of historical analysis. *See United States v. Plattner*, 330 F.2d 271, 274 (2nd Cir. 1964).

173, 177-80 (1946) (affirming *pro se* defendant's conviction). And in *Price v. Johnston*, 334 U.S. 266, 285 (1948), *overruled by McClesky v. Zant*, 499 U.S. 467 (1991), the Court merely contrasted the absence of any right to argue one's own appeal with the "constitutional prerogative of being present in person at each significant stage of a felony prosecution." What is more, while the Court in *Price* referred to a "constitutional prerogative to be *present*" at one's trial, it pointedly referred to "conducting [one's] own defense at the trial" as merely being a "recognized privilege." *Price*, 334 U.S. at 285.

As for the 17 state cases that the Court cited, only six actually found a right of self-representation in the Constitution.[7] *See Faretta*, 422 U.S, at 813-14 nn.9 & 11 (footnote added). Two even seemed to *disclaim* a right to self-representation, stating that whether a defendant could act as his own counsel "lies within the sound discretion of the trial judge." *State v. Woodall*, 491 P.2d 680, 681 (Wash. Ct. App. 1971); *Cappetta v. State*, 204 So.2d 913, 918 (Fla.

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[7] In the others, the right was explicitly granted by statute, *see, e.g., Westberry v. State*, 254 A.2d 44, 46 & n.4 (Me. 1969); *State v. Thomlinson*, 100 N.W.2d 121, 122 (S.D. 1960); *State v. Hollman*, 102 S.E.2d 873, 878 (S.C. 1958), *overruled on other grounds by Stevenson v. State*, 516 S.E.2d 434 (S.C. 1999); *State v. Pritchard*, 41 S.E.2d 287, 287 (N.C. 1947), or recognized in the state constitution, *see, e.g., State v. Penderville*, 272 P.2d 195, 199 (Utah 1954); *Cappetta v. State*, 204 So.2d 913, 916 (Fla. Dist. Ct. App. 1967), *rev'd on other grounds*, 216 So.2d 749 (Fla. 1968); *State v. Woodall*, 491 P.2d 680, 681 (Wash. Ct. App. 1971).

Dist. Ct. App. 1967), *rev'd on other grounds*, 216 So.2d 749 (Fla. 1968).

B. Opinions of the Court and Various Justices Have Eroded *Faretta*'s Underlying Rationale

Over the years, the Court has incrementally trimmed *Faretta*'s application and cast doubt upon its underlying rationale. For example, while *Faretta* found a "constitutional right to proceed without counsel," *id.* at 807, in *McKaskle v. Wiggins*, 465 U.S. 168, 187 (1984) (permitting imposition of standby counsel), the Court recast that right as merely the defendant's "constitutional right to appear on stage at his trial." It also stressed that "the defendant's right to proceed *pro se* exists in the larger context of the criminal trial," which is designed to determine guilt or innocence, not to provide a platform for self-actuation. *See id.* at 177 n.8.

In *Martinez v. Court of Appeal*, 528 U.S. 152, 163 (2000) the Court rejected self-representation on appeal and criticized *Faretta*'s "nontextual" and historical analysis by observing that "the original reasons for protecting that right do not have the same force" now when every defendant can have competent counsel appointed. *See id.* at 158, 160. *Martinez* also cast doubt upon *Faretta*'s "autonomy" rationale, reasoning that autonomy is sufficiently respected with appointed counsel that is loyal and competent. *See id.* at 160-61. Finally, citing *McKaskle*, the Court in *Martinez* said that "the defendant's interest in acting as his own lawyer" is at times outweighed by "the government's interest in

ensuring the integrity and efficiency of the trial." *Id.* at 162. The Court thus suggested that future cases could further limit or even abrogate the right to self-representation where its invocation squarely conflicts with fundamental fairness. *See id.*

Opinions of individual Justices also have eroded the foundations of *Faretta*. In his concurring opinion in *Martinez*, Justice Kennedy observed that the Court's opinion "cast[s] doubt upon the rationale of *Faretta*." *Id.* at 164 (Kennedy, J., concurring). Justice Breyer expressed his sympathy for judges who regard the right to self-representation as "'conflict[ing] squarely and inherently with the right to a fair trial.'" *Id.* at 164 (Breyer, J., concurring). He also suggested the Court would be in a position to reconsider *Faretta* if it were presented with empirical data addressing whether "the right to represent oneself . . . inhibits the Constitution's basic guarantee of fairness." *Id.* In *Godinez*, Justice Blackmun, joined by Justice Stevens, argued that it "contravenes fundamental principles of fairness" to try without counsel a defendant who, due to mental illness or medication, is "utterly incapable of conducting his own defense." *Godinez v. Moran*, 509 U.S. 389, 416-17 (1993) (Blackmun, J., dissenting).

Justice Scalia, while supporting a right of self-representation, has questioned whether *Faretta* correctly grounded the right in the Sixth Amendment rather than the Due Process Clause. *See Martinez*, 528 U.S. at 165 (Scalia, J., concurring in the judgment). Presumably, a right to self-representation grounded in the Due Process Clause rather than the Sixth Amendment would not be structural and, therefore, would even more clearly be

subject to judicial balancing. *Cf. Gonzalez-Lopez*, 126 S. Ct. at 2562; *Crawford v. Washington*, 541 U.S. 36, 61 (2004).

C. The Post-*Faretta* Development of a Skills-Based Ineffective-Assistance-of-Counsel Doctrine also Undermines *Faretta*

It is now established that a conviction is invalid when defense counsel at trial performs below minimal standards of competence. *See* Part I.A, *supra*. When *Faretta* was decided, however, the Court had not yet announced that a fair trial required counsel to conduct the defense with minimally competent skill. To be sure, in *McMann v. Richardson*, 397 U.S. 759, 771 n. 14 (1970), the Court acknowledged that a defendant has the right to minimally competent advice when deciding whether to plead guilty. But not until *Strickland v. Washington*, 466 U.S. 668, 683 (1984), did the Court apply that standard to counsel's actual performance *at trial*. Prior to that, application of the ineffective-assistance standard was derived from the Due Process Clause, *see Gonzalez-Lopez*, 126 S. Ct. at 2562-63, and was limited to "claims based on actual or constructive denial of the assistance of counsel altogether, as well as claims based on state interference with the ability to render effective assistance to the accused." *Strickland*, 466 U.S. at 683.[8]

---

[8] *See Chambers v. Maroney*, 399 U.S. 42, 53-54 (1970) (indicating State might violate right to effective assistance of counsel by appointing an attorney too late for adequate preparation); *Reece v. Georgia*, 350 U.S. 85, 90 (1955) (observing that it is a violation of right to assistance of counsel where assignment of counsel takes

The development of ineffective-assistance-of-counsel doctrine since *Faretta* is significant because it demonstrates how the Court has come to view the *actual* provision of a defense at trial, and not merely literal, yet entirely theoretical, compliance with textual rights, as essential to the preservation of Sixth Amendment guarantees. That is, while providing the defendant with "counsel" who could "assist" only insofar as he could show the way to the courthouse might *theoretically* carry out the structural trial safeguards represented by the Sixth Amendment, the Court has now decided that the Sixth Amendment requires more. After *Strickland*, sufficiently effective *performance* at trial is necessary to vindicate the structural guarantee of the assistance of trial counsel.[9] *See id.* As the Court observed recently, "our recognition of the right to effective counsel within the Sixth Amendment was a

---

place "at such time and under such circumstances as to preclude the giving of effective aid in the preparation and trial of a capital case"); *Avery v. Alabama*, 308 U.S. 444, 446 (1940) (addressing timing of appointment of counsel and fact that effective assistance of counsel required more than just formal appointment); *Powell v. Alabama*, 287 U.S. 45, 70-73 (1932) (holding that trial court's failure to allow sufficient time for defendants to obtain counsel and failure to appoint counsel for defendants in capital case violates right to assistance of counsel).

[9] Furthermore, counsel who does not undertake minimal communication with the court or jury is so completely ineffective, and so structurally injurious to the process, that a defendant who is convicted in that circumstance need not prove prejudice to win a new trial. *See United States v. Cronic*, 466 U.S. 648, 658-61 (1984).

consequence of our perception that representation by counsel 'is critical to the ability of the adversarial system to produce just results.'" *Gonzalez-Lopez*, 126 S. Ct. at 2563 (quoting *Strickland*, 466 U.S. at 685).

This post-*Faretta* "perception" is so critical that the same minimal-competency standards apply even where the performance at issue is that of the defendant's first-choice *paid* counsel. *See Miller v. Martin*, 481 F.3d 468, 470 (7th Cir. 2007) (finding paid counsel's performance constitutionally ineffective at sentencing). In fact, a trial court is well within its authority to disqualify, *before* trial, first-choice counsel who patently cannot provide minimally effective assistance. *See Wheat v. United States*, 486 U.S. 153, 162-64 (1988).

Faretta cannot be squared with this "just results" view of the right to counsel. *Faretta* tangentially adverted to the implausible theory that self-representation might yield the best possible defense. *See Faretta*, 422 U.S. at 834. By now, however, there can be no romantic illusion that proceeding *pro se* may provide a better chance at a favorable result. In any event, much more central to *Faretta*'s holding was the entirely theoretical notion that the Sixth Amendment protects a defendant's right to self-actualization and autonomy. *See id.* at 820-21, 834. Whether self-representation really protects such nebulous values is unknowable—and entirely unrelated to achieving a just resolution of criminal charges in any event. Concern for actual justice, as produced by a meaningfully adversarial trial, has since overwhelmed the purely abstract rationale of *Faretta*. The Court should, if necessary to enable

states to ensure that defendants such as Edwards proceed to trial represented by counsel, sweep *Faretta* aside.

CONCLUSION

The decision below should be reversed.

Respectfully submitted,

STEVE CARTER
Attorney General
THOMAS M. FISHER*
Solicitor General
JULIE A. BRUBAKER
JUSTIN F. ROEBEL
HEATHER L. HAGAN
Deputy Attorneys General

Office of the Indiana
Attorney General
IGC South, Fifth Floor
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-6201

* *Counsel of Record*

Counsel for Petitioner

Dated: February 4, 2008

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v.

AHMAD EDWARDS,
Respondent.

On Writ of Certiorari to the Supreme Court of Indiana

BRIEF FOR PETITIONER

Office of the Indiana
Attorney General
IGC South, Fifth Floor
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-6201
tom.fisher@atg.in.gov

STEVE CARTER
Attorney General
THOMAS M. FISHER*
Solicitor General
JULIE A. BRUBAKER
JUSTIN F. ROEBEL
HEATHER L. HAGAN
Deputy Attorneys General

* *Counsel of Record*

Counsel for Petitioner

RESPONDENT'S BRIEF

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BRIEF FOR THE RESPONDENT

DANIEL R. ORTIZ
MICHELLE D. MORRIS
University of Virginia School of Law Supreme Court Litigation Clinic
580 Massie Road
Charlottesville, VA 22903
(434) 924-3127

MICHAEL R. FISHER
151 N. Delaware Street
Suite 200
Indianapolis, IN 46204
(317) 327-3404

MARK T. STANCIL*
Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP
1801 K Street, N.W.
Suite 411
Washington, D.C. 20006
(202) 775-4500

DAVID T. GOLDBERG
Donahue & Goldberg, LLP
99 Hudson St., 8th Fl.
New York, NY 10013
(212) 334-8813

**Counsel of Record*

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

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QUESTION PRESENTED

May States adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?

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STATEMENT

In July 1999, respondent Ahmad Edwards was criminally charged following an incident in which it was alleged that, when resisting apprehension by a security guard for shoplifting a pair of shoes, he drew and fired a gun, injuring an onlooker. Pet. App. 18a-19a.

Edwards's mental status was the subject of a series of inquiries over the next five years. Although petitioner acknowledged that Edwards suffered from mental illness, it consistently urged that he was competent to stand trial—repeatedly pointing to psychiatric reports describing his condition as improving (though it became clear Edwards was receiving little, if any, psychiatric treatment).

In 2004, the trial court, after rebuffing petitioner's third effort to have Edwards declared competent, remanded him to the care of a state hospital, where, for the first time, he received anti-psychotic medication and other psychiatric care. After that treatment, doctors reported that Edwards's thought processes were "coherent" and that he "communicate[d] very well." J.A. 232a.

Edwards then sought to exercise his right of self-representation, citing fundamental disagreements with his court-appointed counsel. J.A. 532a. It is not disputed that Edwards's decision to waive counsel and proceed *pro se* was timely, knowing, and voluntary. Pet. App. 14a, 24a; Pet. Br. 3. The court nonetheless refused Edwards's request, indicating that he lacked unspecified "abilities" needed for self-representation. J.A. 527a. The Supreme Court of Indiana reversed, holding that denying Edwards self-

representation on that basis violated the Sixth Amendment. Pet. App. 14a.

A. Edwards's Mental Condition And Competency To Stand Trial

1. The First Three Competency Determinations

Following his arrest, Edwards's court-appointed counsel filed a motion requesting a psychiatric examination. J.A. 13a-14a. After considering conflicting psychiatric reports, the trial judge determined in August 2000 that Edwards was not competent to stand trial, J.A. 365a, and committed him to Logansport State Hospital for further evaluation, J.A. 48a-50a.

Edwards remained at Logansport for three months, during which time he received little, if any, medical care. J.A. 56a, 110a. Although Edwards was given Benadryl on an as-needed basis for insomnia, he was not given anti-psychotic medication, J.A. 61a, or any other drugs "routinely given by mental health professionals to treat thought disorders," J.A. 420a, nor is there evidence that he received psychotherapy or counseling.[1] Nonetheless, in spring 2001, Dr. Steven Berger, a staff psychiatrist at the state hospital, pronounced Edwards "free of psychosis, depression, mania, and confusion," and competent to stand trial. J.A. 61a, 64a.

---

[1] At a later hearing, Dr. Phillip Coons, a professor of psychiatry at Indiana University Hospital, testified that it was not "valid * * * [to] assume" that a person had received treatment merely because he had been admitted to Logansport. J.A. 475a.

In fall 2001, defense counsel again raised concerns about Edwards's competency, filing a motion expressing doubt that Edwards had actually been treated at Logansport and seeking release of his medical records. Ed.App. 225-227. Two court-appointed psychiatrists filed reports concluding that Edwards was competent to stand trial. J.A. 110a-112a. The trial court convened a hearing, at which the State argued that Edwards was competent to be tried and elicited expert testimony to that effect. J.A. 386a; see also J.A. 393a-394a, 400a (testimony that Edwards possessed the ability to communicate coherently). The State also highlighted the defense expert's conclusions that Edwards's verbal intelligence was in the average range, J.A. 429a-430a, as were his attention and concentration abilities, Ed.App. 248.

After the hearing, the trial judge to whom the case had been reassigned ruled that Edwards was competent to stand trial. J.A. 114a. He found, among other things, that Edwards could comprehend the proceedings and "understood the legal concepts of guilt and innocence" and "the roles of Judge, Jury, Witnesses, Prosecutor, and Defense Attorney," noting that he had "filed his own motions, *pro se*, since the inception of the case." *Ibid.*

The court agreed to revisit that decision after the defense submitted an expert report concluding that Edwards was incompetent to stand trial and recommending that he be "hospitalized at Logansport." J.A. 164a-165a. At an April 2003 hearing, that conclusion was resisted by the State and by the psychiatrists who had twice earlier opined that Edwards was competent to stand trial. J.A.

186a-189a, 190a-196a, 464a. In November of that year, the trial court vacated its earlier determination that Edwards could be tried and ordered his commitment to Logansport for inpatient treatment. J.A. 206a-211a.

2. Treatment And Restoration Of Competency

Edwards was readmitted to Logansport in January 2004. J.A. 214a. During his six-month stay, he received a "full program of pharmacotherapy, individual and group psychotherapy, counseling from the professional staff of the various disciplines, milieu therapy, and educational classes in Legal Education, Coping Skills, Anger Management, Social Skills, ICST Groups, Men's Issues, and Recreational Therapy." J.A. 216a. Doctors administered Seroquel, an anti-psychotic drug, which Dr. Robert Sena, a staff psychiatrist at Logansport, reported "achieve[d] optimal symptom improvement." J.A. 230a.

Dr. Sena opined that this treatment had "greatly improved" Edwards's mental condition, J.A. 231a, and that Edwards was competent to stand trial, J.A. 235a. In a written report, Dr. Sena concluded that Edwards had made "excellent progress in the reduction/elimination of his psychotic symptoms," J.A. 234a; that he no longer suffered from hallucinations or delusions, J.A. 231a; and that his "thought processes [we]re coherent," J.A. 232a. Dr. Sena specifically stated that Edwards "communicates very well" and that "[h]is speech is easy to understand." *Ibid.*

Dr. Sena also highlighted Edwards's "excellent understanding of courtroom procedures," J.A. 233a, reporting that he had passed the final written

examination in "Legal Education II" by answering 61 out of 75 questions correctly, J.A. 231a; that Edwards could recite the exact charges against him, their felony levels, and the range of possible sentences each carried, J.A. 233a; that he could "appraise the roles of the participants in the courtroom proceedings," *ibid.*; and that he had the capacity to challenge prosecution witnesses realistically and testify relevantly, J.A. 234a. Dr. Sena stated that Edwards's "memory is good in all spheres (immediate, recent, and remote)," J.A. 231a, and he concluded that Edwards had "good communications skills, cooperative attitude, average intelligence, and good cognitive functioning," J.A. 235a.

On the basis of Dr. Sena's report, the trial court ruled Edwards competent to be tried. Pet. App. 3a. His competency to stand trial was not subsequently challenged.[2]

---

[2] As petitioner notes (Br. 10-11), Edwards made a number of *pro se* submissions after this final competency determination, some of which were enigmatic or hard to follow. But as even petitioner acknowledges, numerous others show that Edwards was capable of making "coherent" and "logical" written arguments. *Id.* at 47 (so characterizing *pro se* motions for dismissal under Indiana Rule of Criminal Procedure 4(c)); see J.A. 238a, 246a; see also J.A. 270a, 273a (motion to proceed *pro se* arguing that he should "not be required to demonstrate competence for self-representation: *Godinez* v. *Moran*, 509 U.S. 389"); J.A. 288a (seeking dismissal under Indiana's statutory double jeopardy prohibition, Ind. Code Ann. § 35-41-4-3 (West 2004)).

B. Trial Court Proceedings

1. First Pro Se *Hearing*

On the day his June 2005 trial was to commence, Edwards petitioned the court to proceed *pro se*, J.A. 509a, expressing concern that his court-appointed attorney had not spent sufficient time reviewing the case with him and had restricted his access to trial materials:

> It's real important because it deals with my life, Your Honor, and it, it seems as if for the past six years preparing for this case, attorneys have isolated me from the material or from the discovery and it troubles me to think that I won't make a good case or I won't have a good trial of this. Your Honor, basically it's, it's, either you can give me a, another attorney or I'll have to go pro se with this because I'm, I'm believing that the changes that need to be made with the case are going to cause for me to suffer with the lawyer.

Ibid. Edwards was particularly troubled that his appointed counsel had not spent sufficient time with him to prepare the case properly:

> Well, Your Honor, it's been, we've had a 90-day period to prepare but I've only had three visits from Mr. Cushing in the past, in the past three days. * * * All of the meetings together were about 20 minutes long so we're looking, I'm looking at about 40 to maybe a little bit more, maybe 50 minutes with him with such a large case, and this case is, it's just too enormous for 40 minutes to go forth with a trial today.

J.A. 510a. The trial court acknowledged that Edwards "ha[d] the right to waive counsel and appear pro se" and that his waiver was "knowing[] and voluntar[]y." J.A. 512a.

The trial judge then proceeded to quiz Edwards on various points of law, including his understanding of particular rules of evidence. J.A. 514a-515a. Edwards told the court that he "honestly would need a little bit of time to study [the rules of evidence]" and that he was not prepared because he had expected the court to grant him a continuance to prepare his *pro se* defense. J.A. 515a.

The trial judge then questioned Edwards on the rules of jury selection:

> THE COURT: How do, how do you do voir dire?
>
> MR. EDWARDS: Beg your pardon?
>
> THE COURT: What's voir dire, what is voir dire?
>
> MR. EDWARDS: Voir dire is the selection of jury.
>
> THE COURT: And how do we do that?
>
> MR. EDWARDS: Well, there's, it's a striking process. We select the jurors by ten strikes apiece.

J.A. 517a-518a.[3] The trial judge also asked Edwards to identify "the predicate questions that have to be

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[3] Indiana Jury Rule 18(a)(2) provides: "In criminal cases, the defendant and prosecution each may challenge peremptorily * * * ten (10) jurors."

asked before a video tape's admissible." J.A. 519a. Edwards answered:

> Well, video tapes would be under physical evidence and cross examining one of State's witnesses, I would actually have to ask some of the basic essentials of who, what, where, why and when to see if the individual was actually there or if they have any knowledge of the material that they are seeing.

Ibid.

Edwards continued to assert that he wanted to represent himself, but acknowledged that he would need more time to prepare. J.A. 520a. If the court would not grant a continuance, Edwards stated, he would need a lawyer. *Ibid.* The court denied his request for a continuance. *Ibid.* After a two-day trial, the jury found Edwards guilty of theft and criminal recklessness but could not reach a verdict on the more serious charges of attempted murder and battery with a deadly weapon. Pet. App. 3a, 19a.

2. Second Pro Se *Hearing*

Before his December 2005 retrial on those charges, Edwards again petitioned to proceed *pro se*. J.A. 279a-282a. At a hearing on the first day of trial, Edwards explained that he and his attorney disagreed about which of two competing defenses to present:

> MR. EDWARDS: Objection, Your Honor. Objection, Your Honor.
>
> THE COURT: What's your objection?
>
> MR. EDWARDS: My objection is me and my attorney actually had discussed a defense, I

> think prosecution had mentioned that, and we are in disagreement with it. He has a defense and I have a defense that I would like to represent or present to the Judge.
>
> THE COURT: What does that have to do with what I've been saying so far?
>
> MR. EDWARDS: I just wanted to make the record with that objection. This is the most present opportunity that I had. Thank you.
>
> THE COURT: All right.
>
> MR. EDWARDS: Thank you, Your Honor.

J.A. 523a. Without any further inquiry—and without affording Edwards an opportunity to address the court further—the trial court rejected his request. J.A. 527a.

The court did not dispute that Edwards's waiver was timely, knowing, and intelligent. J.A. 527a; see *Sherwood* v. *State*, 717 N.E.2d 131, 136 (Ind. 1999). The trial judge, however, decided to "carve out a third exception" to the self-representation right. J.A. 527a. In his view, self-representation required "more than just an understanding of *Sherwood* fifteen points" and "more than just a plan that doesn't cause a continuance." *Ibid.* Counsel could be imposed, he concluded, based on a defendant's lack of other (unspecified) self-representation "abilities." *Ibid.*

Referencing various psychiatric reports (some dating back to February 2000, J.A. 526a), the court held that Edwards fell within this newly announced "third exception" to the Sixth Amendment right of self-representation. J.A. 527a. "If I'm wrong," the trial judge remarked, "we'll just try this case again." *Ibid.*

At retrial, Edwards was represented by court-imposed counsel, who pursued the line of defense that he—not Edwards—had preferred. 12/19/05 Tr. 75-76. Edwards was convicted on the remaining two counts and sentenced to thirty years' imprisonment. Pet. App. 3a.

C. Appeal

Edwards appealed, arguing that the trial court's refusal to permit him to proceed *pro se* violated the Sixth Amendment. Pet. App. 17a. The State conceded "that the United State's [sic] Supreme Court has specifically held that the same standard of competency applies both to the ability to stand trial, and the ability to represent oneself. *Godinez v. Moran*, 509 U.S. 389, 397-99 (1993)." State C.A. Br. 6. "[U]nder *Faretta*," the State explained, "a trial court's only proper consideration is the defendant's ability to make a knowing, intelligent, and voluntary waiver of counsel, not his ability to competently represent himself." *Id.* at 6-7. Nonetheless, the State urged the court to uphold the trial court's ruling because Edwards's "problematic disconnects with reality, even after being found competent to stand trial, support[ed] this result." *Id.* at 9.

The Indiana Court of Appeals reversed, holding that the trial court erred in refusing Edwards's knowing and voluntary waiver of counsel. Pet. App. 24a. The court explained that *Faretta* gives a defendant "the constitutional right" to proceed *pro se* even though he "will lose the advantage of an attorney's training and experience and may conduct his defense to his own detriment." *Id.* at 21a. The court observed that Edwards had made "multiple timely and

unequivocal requests to represent himself prior to his second trial," and that it was therefore "incumbent upon the trial court to grant his request." *Id.* at 24a.

The State sought review in the Supreme Court of Indiana, again acknowledging that "the United States Supreme Court has recognized a broad right for self-representation and specifically held that the same standard of competency applies both to the ability to stand trial and the ability to represent oneself. *See Godinez v. Moran*, 509 U.S. 389, 397-99 (1993)." Pet. to Transfer 4. The State again argued, however, that "a defendant's constitutional right to a fair trial may require a trial judge to deny a request for self-representation" because "there are some instances * * * in which a defendant is capable of assisting counsel but is not capable of presenting his own defense." *Id.* at 6.

The Supreme Court of Indiana unanimously affirmed, holding that compelling Edwards to accept unwanted counsel violated the Sixth Amendment. Pet. App. 14a. *Faretta*, the court explained, recognized that, although "most criminal defendants would be better defended by counsel * * *[,] forc[ing] unwanted counsel on a defendant violates the logic of the Sixth Amendment." *Id.* at 5a (internal quotation marks omitted). The court rejected the suggestion that the right of self-representation could be conditioned on a showing of heightened competency. *Id.* at 14a. Because "Edwards [had] properly asserted his Sixth Amendment right," *id.* at 9a, and because there was no finding that "Edwards's waiver of counsel was not knowing and voluntary," *id.* at 14a, he had the "constitutional right to proceed pro se," *ibid.*

SUMMARY OF ARGUMENT

Citing a fundamental strategic disagreement with his court-appointed counsel, Ahmad Edwards sought to exercise his Sixth Amendment right of self-representation. Although it is not disputed that Edwards's request was timely, knowing, and intelligent, the trial court flatly rejected it. The trial court's evident basis for doing so was that Edwards suffered from mental illness and lacked unspecified "abilities" that would permit him to do an effective job as his own lawyer. That decision offends the fundamental nature of the right of self-representation. As this Court made clear in *Faretta* v. *California* and has reaffirmed without exception in the decades since, the Sixth Amendment protects the defendant's *choice* to proceed *pro se*. Here, Edwards made that choice "with his eyes open," and the trial court was bound to respect it. The unanimous judgment of the Supreme Court of Indiana should be affirmed.

I. Contrary to petitioner's assertions, denying Edwards any measure of self-representation is flatly contrary to this Court's settled understanding of the Sixth Amendment. In *Faretta*, this Court held that the structure, logic, and history of the Sixth Amendment guarantee the accused the right to refuse the assistance of counsel and represent himself at trial so long as his decision to do so is knowing and voluntary. In so holding, the Court did not slight the dangers of pro se representation. To the contrary, *Faretta* candidly recognized that even the most "intelligent and educated" non-lawyers run a very real risk of wrongful conviction by refusing assistance of counsel. And, particularly significant for present

purposes, the Court further acknowledged that the perils of self-representation would be especially high for "the ignorant and illiterate, or those of feeble intellect." In the face of those risks, the Court squarely held that, because the Sixth Amendment right to defend is personal, a defendant's choice to proceed without counsel must be honored.

Petitioner's contention that *Faretta* nonetheless allows States to "limit" this Sixth Amendment right to those defendants who meet some "minimum" standard of "competence" is refuted by the logic and language of this Court's decision. There is no hint in *Faretta* that the right is one that only certain classes of defendants are guaranteed. Indeed, *Faretta* expressly pronounced a defendant's ability "not relevant." The Court recognized that, although trials without counsel are almost always detrimental to defendants' interests, their autonomy to choose that path must be protected. And, as noted above, *Faretta* specifically contemplated the challenges the right entailed for "intelligent" and "feeble-minded" defendants alike.

Although Petitioner and its *amici* seek to soften the blow by suggesting that defendants' "interests" will factor in the balance against government concerns, *Faretta* protects the personal *right* to make this fundamental decision. And after *Godinez* v. *Moran* held that States are not *obligated* to insist on a special showing before accepting a competent but impaired defendant's waiver of counsel, the rule petitioner seeks here would grant States unfettered discretion whether to recognize the right for this class of defendants. Vesting *States* with the power to

choose whether a defendant may proceed *pro se* turns the essential rationale of *Faretta* on its head.

Petitioner labors to show that this Court's post-*Faretta* decisions support state power to parcel out self-representation rights, but those efforts fall flat. This Court's opinion in *Godinez* specifically confirmed that "a criminal defendant's ability to represent himself has no bearing upon his competence to choose self-representation." Petitioner and its *amici* chant the constant refrain that *Godinez* did not decide the question presented here, but they fail entirely to confront the clear import of the Court's reasoning.

Petitioner clings tightly to this Court's decision in *McKaskle* v. *Wiggins*, but that case offers little comfort. The fact that the right of self-representation is not "absolute" cannot possibly support the inference that complete elimination of the right is warranted when the State chooses to advance certain "interests." Indeed, *McKaskle* confirmed *Faretta*'s fundamental premises and held that the trial court must preserve both the defendant's "actual control" over his case *and* "the jury's perception that the defendant is representing himself." Here, Edwards enjoyed neither.

Petitioner's reliance on *Martinez* v. *Court of Appeal* fares no better, because that case did not even directly concern the Sixth Amendment. Nor can petitioner derive authority to foreclose preemptively the right of self-representation from *Faretta*'s recognition that courts may revoke *pro se* status if a defendant abuses it. The rule petitioner urges has nothing to do with abuse, and Edwards was denied *any* opportunity to appear *pro se*. Finally, this Court's holding in *Wheat* v. *United States* that a

defendant's choice of *counsel* may be subject to courts' traditional authority to regulate lawyers' ethical obligations is unhelpful to petitioner's cause. Choosing among lawyers implicates a qualitatively different Sixth Amendment interest than does choosing whether to proceed *pro se*. In the former instance, there are any number of acceptable alternatives; in the latter, there is no "second choice" through which to vindicate the uniquely personal dimension of self-representation.

II. Petitioner's argument that generic interests in "fairness" and "adversarial" testing can support the wholesale elimination of self-representation is fundamentally mistaken. It is one thing to say that society has an interest in promoting fairness in the criminal justice system and that many rights conferred on defendants promote that objective. But it is another thing altogether to say that such concerns support *forcing* defendants to exercise certain constitutional rights and abandon others. Petitioner claims that, when a defendant "elects" to stand trial, the "whole point" (read: the *only* point) is to "persuade" a jury of his innocence. But as this Court has recognized repeatedly (and specifically concluded in *Godinez*), there is nothing "fundamentally unfair" about a verdict rendered after a defendant knowingly and voluntarily forgoes one or more of the "tools" the Constitution provides for challenging the government's case.

Petitioner's effort to assemble a parade of horribles as evidence of States' overwhelming "need" to deny certain defendants' self-representation rights fails utterly. Several of its anecdotal examples would be unaffected by applying the "coherent

communication" rule petitioner proposes. Indeed, limited experience with a communication-based threshold suggests that such a rule would only invite the very discrimination against the mentally ill that the law fights to contain in other areas.

Moreover, the broad authority petitioner seeks is entirely unnecessary. Courts possess—and, even under trying circumstances, skillfully employ—numerous less-restrictive alternatives to the complete elimination of self-representation. Most obviously, the appointment of standby counsel offers courts a ready and flexible tool to preserve the autonomy principles that *Faretta* and its progeny recognize.

III. Even if the Sixth Amendment permitted a heightened "competency" standard for self-representation, Edwards's rights were undoubtedly violated in this case. The trial court did not even articulate an actual legal standard, much less apply one of the rules retrospectively offered by petitioner and various *amici*. Moreover, the experts who evaluated Edwards were not asked—and therefore did not answer—whether Edwards possessed the additional "abilities" deemed necessary to proceed *pro* se. Even if inferences could be drawn from those reports, surely it is impermissible to rely (as the trial court did here) on assessments performed *before* Edwards received the extensive psychiatric treatment that rendered him competent to stand trial in the first place.

In any event, even a casual review of the relevant record confirms that Edwards bears little resemblance to the "incoherent" individual selectively portrayed in petitioner's brief. The trial court had no difficulty understanding Edwards's statements in

open court, including his perfectly lucid (and, for that matter, largely correct) answers to the judge's questioning. More revealing still, the staff psychiatrist who interviewed and evaluated Edwards *after* he received meaningful psychiatric care extolled his "communication" skills, comprehension, and thorough understanding of his legal situation.

IV. Petitioner concludes by proposing the radical alternative of simply overruling *Faretta*. That suggestion deserves this Court's swift rejection, both because it is not properly presented here, and because petitioner cannot show that *Faretta* was wrong. Nor, in any event, can petitioner adduce the substantial "special justification" required to overturn such a longstanding decision. *Faretta* is not only settled precedent, it also has become part of the warp and woof of the law, and the practical importance of the right goes far beyond cases in which it is actually invoked. Although individual, highly-publicized instances of self-representation may cause some dismay, empirical experience teaches that the regime is entirely workable. Indeed, it is telling that none of petitioner's *amici*—including 19 States and the United States—have joined its call to discard the decision.

ARGUMENT

I. THE SIXTH AMENDMENT RIGHT OF SELF-REPRESENTATION MAY NOT BE DENIED BASED ON ABILITY

A. The Sixth Amendment Requires States To Respect The Knowing And Voluntary Self-Representation Choices Of Those It Puts On Trial

1. In *Faretta* v. *California*, 422 U.S. 806, 807 (1975), this Court held that a State may not "hale a person into its criminal courts and there force a lawyer upon him, even when he insists that he wants to conduct his own defense."

The right of self-representation, *Faretta* concluded, flows from the structure, logic, and history of the Sixth Amendment, which "does not provide merely that a defense shall be made for the accused; [but] * * * grants to the accused *personally* the right to make his defense," 422 U.S. at 819 (emphasis added). Because the right is personal—and because "[t]he defendant, and not his lawyer or the State, will bear the personal consequences of a conviction"—"[i]t is *the defendant* * * * who must be free personally to decide whether in his particular case counsel is to his advantage." *Id.* at 834 (emphasis added). And when the State "thrust[s] counsel upon the accused, against his considered wish, * * * the right to make a defense is stripped of the personal character upon which the [Sixth] Amendment insists." *Id.* at 820.

As the Court recognized, those "who wrote the Bill of Rights" understood not only "the inestimable worth of free choice" generally, but also the particular

importance of being able to proceed *pro se*. 422 U.S. at 833-834. The Court noted that, "[i]n the long history of British criminal jurisprudence, [the only] tribunal that ever adopted a practice of forcing counsel on an unwilling defendant * * * was the Star Chamber." *Id.* at 821. And in colonial America, where "insistence upon a right to self-representation was, if anything, more fervent than in England," *id.* at 826, the Court was unable to locate a single "instance where a colonial court required a defendant in a criminal case to accept as his representative an unwanted lawyer," *id.* at 828.

The Court did not flinch from the recognition that a defendant's choice of *pro se* representation would seldom be a wise one. "It is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts." 422 U.S. at 834.

Nor did the Court underestimate the magnitude of the "detriment." Describing "the help of a lawyer [as] *essential* to assure the defendant a fair trial," 422 U.S. at 832-833 (emphasis added), the Court observed:

> "Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his

> defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceeding against him. *Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.*"

Id. at 833 n.43 (emphasis added) (quoting *Powell* v. *Alabama*, 287 U.S. 45, 69 (1932)).

Significantly, the Court then specifically observed that, if that risk is present for "men of intelligence, *how much more true is it of the ignorant and illiterate, or those of feeble intellect.*" 422 U.S. at 833 n.43 (emphasis added). Nonetheless, the Court concluded, the defendant's choice to proceed *pro se* "must be honored, out of 'that respect for the individual which is the lifeblood of the law.'" *Id.* at 834 (quoting *Illinois* v. *Allen*, 397 U.S. 337, 350-351 (1970) (Brennan, J., concurring)).

2. Petitioner fails utterly in its effort (Br. 34-41) to suggest that it is "entirely consistent" with *Faretta* to allow States to deny self-representation to certain (otherwise competent) defendants. On the contrary, the core premise of petitioner's argument—that States are free to take account of defendants' "abilities" to represent themselves and to deny self-representation to those less "able"—is at war with both the logic and the explicit language of this Court's decision.

For starters, the fundamental right enforced in *Faretta* belongs to "the accused" in a criminal trial, U.S. Const. Amend. VI, not some subset of the individuals whom the State undertakes to deprive of their liberty. Nor is the concern that a defendant will "believe that the law contrives against him," 422 U.S.

at 834, in any way particular to those whom the State deems able. And the history surveyed by the Court in *Faretta* yielded *no* examples of imposing unwanted counsel on the ground that the defendants' abilities were limited.

Equally important, petitioner's effort to argue for an ability-based limitation was expressly foreclosed in *Faretta*. The Court repeatedly emphasized that a defendant's abilities in the courtroom are simply "not relevant to an assessment of his knowing exercise of the right to defend himself." 422 U.S. at 836; see U.S. *Amicus* Br. at 16, *Godinez* v. *Moran*, 509 U.S. 389 (1993) (No. 92-725) (reading *Faretta* as "declin[ing] to condition the validity of such a waiver on the trial court's assessment of the defendant's ability to conduct his own defense"). Indeed, as noted above, *Faretta* explicitly recognized that the Sixth Amendment protects "intelligent and educated" defendants and those "of feeble intellect" alike. 422 U.S. at 833 n.43 (quoting *Powell*, 287 U.S. at 69). The inescapable import of that passage is that the Court was well aware when deciding *Faretta* that the right would apply equally to defendants with limited abilities who are competent to stand trial.

Finally, *Faretta* recognized a right of choice, *personal to the defendant*, not an "autonomy interest" that States may extinguish at their discretion by "balancing" it against ostensibly countervailing government concerns, Pet. Br. 20. Petitioner pays lip service (Br. 35) to the fundamental autonomy principles upon which *Faretta* is premised, but it fails to apprehend how substituting the State's choice for the defendant's choice is flatly inconsistent with those principles. See U.S. *Amicus* Br. at 9, *Godinez*,

supra ("To hold that a defendant is competent to be tried but incompetent to perform the tasks essential to the conduct of his defense would deprive the defendant of some of the very choices that the Constitution was designed to protect.").[4]

3. Thus, *Faretta* could not have been clearer in holding that the defendant's *ability* to perform the tasks required of counsel is constitutionally irrelevant. All that matters—at least insofar as the mental status of a defendant competent to stand trial is concerned—is that he is "made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his *choice* is made with eyes open.'" 422 U.S. at 835 (emphasis added) (quoting *Adams* v. *United States ex rel. McCann*, 317 U.S. 269, 279 (1942)).

The centerpiece of petitioner's claim of "consistency" with *Faretta* is a sentence in that opinion describing the defendant as "literate, competent, and understanding." 422 U.S. at 835; see Pet. Br. 24, 35; see also APA Br. 6; CJLF Br. 7; U.S. Br. 11. But this sentence, read with even the

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[4] The United States even more recently observed (correctly) that "[a]n individual who desires self-representation but is nonetheless forced to proceed to trial with counsel appointed by the court suffers an affront to his autonomy and dignity." U.S. Reply Br. at 14, *United States* v. *Gonzalez-Lopez*, 126 S. Ct. 2557 (2006) (No. 05-352) (citation omitted); see also U.S. Br. at 10, *Gonzalez-Lopez*, *supra* ("A defendant's unique right to speak to the court and the jury in his own voice honors his desire to be free from *any* representation."); *id.* at 28 ("The right to *self*-representation has a direct and unique link to autonomy.").

slightest attention to context, cannot possibly be taken as opening the door to competency-based restrictions on self-representation. Most obviously, the Court had already explicitly referenced the parity between the Sixth Amendment rights of the "illiterate" and the "educated layman," recognizing that the risks borne by the former are much greater. *Faretta*, 422 U.S. at 833 n.43 (internal quotation marks omitted).

Moreover, that statement appears in the section of the *Faretta* opinion that concerned whether the decision to proceed *pro se* had been made "knowingly and intelligently." 422 U.S. at 835 (citing *Johnson* v. *Zerbst*, 304 U.S. 458, 464-465 (1938)). More particularly, it immediately followed the observation that "Faretta clearly and unequivocally declared to the trial judge that he wanted to represent himself and did not want counsel." 422 U.S. at 835. Under these circumstances, the reference must be understood as describing the sufficiency of his waiver, not as vesting States with power to deny knowing and voluntary invocations of the self-representation right based on a judgment about the defendant's ability to do a good job.

B. This Court's Subsequent Decisions Do Not Allow States To Impose Skill-Based Exclusions On Who May Exercise Sixth Amendment Rights

As explained above, both the language and the underlying logic of the decision overwhelmingly refute petitioner's claim that *Faretta* recognized (or even left room for) state authority to "protect" individuals with modest cognitive abilities by

refusing to allow their knowing and voluntary assertions of Sixth Amendment rights.

Petitioner's fall-back position—that post-*Faretta* decisions have given States such a license—is equally wrong. To the contrary, this Court's reasoning in *Godinez* reaffirmed *Faretta*'s central teaching that the defendant's choice alone, not skill, is what obliges the State to respect an invocation of the right of self-representation. And none of the decisions petitioner and *amici* seek to enlist in support of state power to parcel out self-representation rights has departed from *Faretta*'s core holding: The Sixth Amendment provides every defendant whom the government puts on trial the right to choose self-representation.

1. Godinez *Makes Clear That Self-Representation Requires Only The Competency To Choose With Eyes Open*

a. This Court's opinion in *Godinez* v. *Moran*, 509 U.S. 389 (1993), confirms that the right recognized in *Faretta* protects a defendant's knowing and voluntary choice to represent himself, even when the State believes that choice to be unwise and against his best interests. To be sure, *Godinez* held that due process does not *mandate* a higher competency standard to plead guilty or waive counsel than it does to stand trial. *Id.* at 391. But the Court's reasoning in reaching that conclusion makes clear that the Sixth Amendment likewise does not *permit* a higher standard for waiving counsel. Petitioner's cursory analysis (Br. 24-25) fails entirely to confront that logic.

The defendant in *Godinez* (Moran) had waived his right to counsel and pleaded guilty to capital murder

in state court. On federal collateral review, Moran argued that, even if he possessed the "rational as well as factual understanding of the proceedings against him" and "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" required for competency to stand trial under *Dusky* v. *United States*, 362 U.S. 402, 402 (1960) (per curiam), his mental illness had nevertheless rendered him incompetent to waive counsel. See Resp. Br. at 41, *Godinez* v. *Moran*, 509 U.S. 389 (1993) (No. 92-725). Echoing *Faretta*, the Court rejected that argument and explained that "the competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right*, not the competence to represent himself." 509 U.S. at 399. Accordingly, "a criminal defendant's ability to represent himself has no bearing upon his competence to *choose* self-representation." *Id.* at 400. Thus, *Godinez* confirmed what *Faretta* made clear: The right of self-representation is the right to make a *choice*; competency is relevant only insofar as it bears on the defendant's capacity to *choose* one path over the other.

The Court also noted that—"dat[ing] back at least to the time of Blackstone," *Godinez*, 509 U.S. at 400 n.11—competency to stand trial has meant competency to represent oneself. The Court explained that the *Dusky* standard arose while self-representation was still commonplace for serious crimes, making it "'difficult to say that a standard which was designed to determine whether a defendant was capable of defending himself' is 'inadequate when he chooses to conduct his own defense.'" *Ibid.* (quoting *People* v. *Reason*, 334 N.E.2d

572, 574 (N.Y. 1975)). Thus, *Godinez* recognized that those who are competent to stand trial necessarily possess the essential level of mental capacity relevant to adequate self-representation.[5]

Moreover, *Godinez* explicitly invoked *Faretta* in rejecting Moran's claim that waiving counsel requires a higher standard of competency. The Court noted that "the defendant's 'technical legal knowledge' is 'not relevant'" to that inquiry, 509 U.S. at 400 (quoting *Faretta*, 422 U.S. at 836), and that, "although the defendant 'may conduct his own defense ultimately to his own detriment, his choice must be honored,'" *ibid.* (quoting *Faretta*, 422 U.S. at 834). That extensive reliance on *Faretta* in rejecting Moran's claim would make little sense (and, indeed, would leave *Godinez*'s logic incomplete) if he were

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[5] As Justice Kennedy observed, "[a]lthough the *Dusky* standard refers to 'ability to consult with [a] lawyer,' the crucial component of the inquiry is the defendant's possession of 'a reasonable degree of rational understanding.'" 509 U.S. at 403-404 (Kennedy, J., concurring in part and concurring in the judgment) (alteration in original). That is, *Dusky* ensures that the defendant possesses the mental capacity to choose whether to proceed *pro se*, and, "[i]f a defendant elects to stand trial and to take the foolish course of acting as his own counsel, the law does not for that reason require any added degree of competence." *Id.* at 404.

Notably, although the United States largely abandons that view here, its brief in *Godinez* echoed Justice Kennedy's point: "A decision that a defendant is competent to stand trial should establish that he is competent to participate fully in his trial by making each of the various decisions that he may be called upon to make in the course of his defense." U.S. *Amicus* Br. at 8-9, *Godinez*, *supra*.

not, by virtue of having met *Dusky*'s threshold for standing trial, entitled to elect self-representation under *Faretta*.

The state *amici* concede that *Godinez* espouses a single competency standard, but they argue that its holding applies only where the defendant waives counsel and then pleads guilty. Ohio *et al.* Br. 7-10; see also APA Br. 16-17. *Godinez*, however, drew no such distinction, see 509 U.S. at 399-400, and every federal court of appeals has understood *Godinez* to apply to a defendant who has gone to trial without counsel (or attempted to do so).[6] Indeed, the State authoring that brief has itself argued (successfully) that *Godinez* applies to defendants who waive counsel and proceed to trial. See Appellee Br. at 18, *State* v. *Jordan*, 804 N.E.2d 1 (Ohio 2004) (No. 00-1833).

b. Petitioner and the United States attempt (Pet. Br. 25; U.S. Br. 26) to read dicta in *Godinez* stating that "States are free to adopt competency standards that are more elaborate than the *Dusky* formulation,"

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[6] See, *e.g.*, *Gallant* v. *Corrections, Me. Warden*, No. 96-1005, 1996 WL 374971, at *1 (1st Cir. July 5, 1996); *United States* v. *Schmidt*, 105 F.3d 82, 88 (2d Cir..1997); *United States* v. *Peppers*, 302 F.3d 120, 131 n.9 (3d Cir. 2002); *United States* v. *Bush*, 404 F.3d 263, 271 (4th Cir. 2005); *Dunn* v. *Johnson*, 162 F.3d 302, 307-308 (5th Cir. 1998); *Gall* v. *Parker*, 231 F.3d 265, 284 (6th Cir. 2000), superseded on other grounds as recognized in *Bowling* v. *Parker*, 344 F.3d 487, 501 n.3 (6th Cir. 2003); *United States* v. *Egwaoje*, 335 F.3d 579, 586-587 (7th Cir. 2003); *Wise* v. *Bowersox*, 136 F.3d 1197, 1202 (8th Cir. 1998); *United States* v. *Hernandez*, 203 F.3d 614, 620 n.8 (9th Cir. 2000); *United States* v. *McKinley*, 58 F.3d 1475, 1481 (10th Cir. 1995); *United States* v. *Cash*, 47 F.3d 1083, 1089 n.3 (11th Cir. 1995); *United States* v. *Ellerbe*, 372 F.3d 462, 466 (D.C. Cir. 2004).

509 U.S. at 402, as conferring authority to put individuals on trial, but require them to proceed through counsel. That is wrong.

As the United States acknowledges (Br. 27), a State could shift or redefine its standard for competency to stand trial without in any way departing from *Faretta*'s rule that those who are accused must be entitled to choose to proceed *pro se*. Indeed, as support for its statement, the Court cited *Medina* v. *California*, 505 U.S. 437 (1992), which confirmed a State's ability to "elaborate" on the standard for competency to *stand trial*. And finally, as we have explained above, the reasoning of *Godinez* is fundamentally at odds with affording States the power to deny self-representation based on a defendant's perceived inability to carry out an effective defense. It would be passing strange to think that the Court's opinion closed with a perfunctory invitation to do exactly that.

2. This Court Has Repeatedly Reaffirmed Faretta*'s Core Holding That Every Competent Defendant Has A Right To Choose Self-Representation, Which States Are Bound To Respect*

Describing this Court's decisions in *McKaskle* v. *Wiggins*, 465 U.S. 168 (1984), *Martinez* v. *Court of Appeal*, 528 U.S. 152 (2000), *Wheat* v. *United States*, 486 U.S. 153 (1988), and *Faretta* itself as establishing the principle that Sixth Amendment rights are not "absolute," Pet. Br. 35; U.S. Br. 10, petitioner and *amici* reason that States should therefore have the power to "regulate," U.S. Br. 9, or "limit," Pet. Br. 57, *pro se* representation. But the cited decisions hardly support the sweeping power they claim.

First, it is a long leap from acknowledging that a right is not "absolute" to holding that it may be completely denied at the government's discretion. What petitioner seeks here is not state power to "regulate" or "limit" a defendant's exercise of his rights, but rather authority to extinguish altogether the Sixth Amendment rights of a class of defendants. And *Faretta* did not recognize an autonomy *interest*, for States to "weigh" against their competing preferences, but an autonomy *right*, which States are bound to respect.[7] But even more odd, only one of the decisions petitioner claims has undermined *Faretta* even *involved* the Sixth Amendment right *Faretta* recognized—and that decision, *McKaskle* v. *Wiggins*,

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[7] The United States makes the extraordinary claim (Br. 17 n.1) that the autonomy "interest" upheld in *Faretta* is adequately protected by the requirement that counsel "consult with the client regarding 'important decisions,' including questions of overarching defense strategy," *Florida* v. *Nixon*, 543 U.S. 175, 187 (2004) (citation omitted). But the extreme nature of that claim is breathtaking: It suggests not merely that there are good reasons for limiting or denying the right, but that there is not even a meaningful difference *to the defendant* between self-representation and attorney representation, a claim even the *Faretta* dissenters did not embrace.

Indeed, the proceedings in this case illustrate why attorney representation and self-representation are not equivalents. Here, Edwards sought to proceed *pro se* because he disagreed with appointed counsel about which of two competing theories of defense—lack of intent or self-defense—to argue to the jury. J.A. 525a. After invocation of his *Faretta* right was rebuffed, trial counsel proceeded to trial with the defense that Edwards opposed, 12/19/05 Tr. 75-76, and Edwards was convicted.

supra, emphatically reaffirmed the holding and reasoning of *Faretta*.

a. Although the Court in *McKaskle* held that appointment of standby counsel (a possibility specifically contemplated in *Faretta*, 422 U.S. at 834 n.46) did not violate the defendant's Sixth Amendment right, it did so only *after* determining that the essential right guaranteed by *Faretta* had been respected. Standby counsel is constitutionally permissible, *McKaskle* held, *only* in cases where the *pro se* defendant retains "actual control" over his case *and* the standby lawyer's actions do not "destroy the jury's perception that the defendant is representing himself." 465 U.S. at 178. Indeed, *McKaskle* is an odd decision from which to argue for an unraveling of *Faretta*. The Court referred to "the longstanding recognition of a right of self-representation," rooted in the "language, structure, and spirit of the Sixth Amendment," guaranteeing a defendant the right "to have *his* voice heard." *Id.* at 174 (emphasis added). And of course, the power upheld in that case—to allow a standby lawyer to perform functions that compromised neither the defendant's actual control nor the jury's perception that he was his own lawyer—is a far cry from what petitioner defends here.

b. *Martinez* did not even directly concern the Sixth Amendment. On the contrary, in holding that the petitioner did not have a constitutional right to proceed *pro se* on *appeal*, the Court explained that the Sixth Amendment right to defend simply does not apply to appeals. 528 U.S. at 160. The Court also noted the absence of any tradition of protecting appellate self-representation even remotely

comparable to the history of self-representation at trial described in *Faretta*. *Id.* at 159-160. Accordingly, the decision in *Martinez* does not impose a "limit[] on self-representation," Pet. Br. 38; rather, it simply refuses to "extend[]" the *Faretta* right in a novel and unprecedented way, 528 U.S. at 160.

c. Petitioner's effort (Br. 38-39) to disqualify a class of defendants from exercising their right of self-representation based on courts' power to terminate self-representation in cases of *abuse* is simply baffling. The rule that a defendant may forfeit his right by "serious and obstructionist misconduct" was announced in *Faretta* itself. 422 U.S. at 834 n.46 (citing *Illinois* v. *Allen*, *supra*). It is one thing to acknowledge that judges' traditional power to preserve courtroom decorum and punish contumacious *behavior* may be applied to *pro se* and represented defendants alike. It is another thing entirely to say that States may exclude a class of defendants from enjoying the Sixth Amendment guarantee at all.[8]

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[8] The United States insists that its position here does not conflict with its position in the prosecution of the terrorist Zacarias Moussaoui, asserting that "there was no basis at all to believe Moussaoui was suffering from any mental disease or defect." Br. 25 n.4. But his court-appointed counsel informed the court that Moussaoui labored under the delusion that the Federal Public Defenders were in a conspiracy to kill him (apparently in order to keep him from revealing secrets in open court), Def.'s Reply to Gov't Position on Competency & Def.'s Self-Representation at 6 n.5, *United States* v. *Moussaoui*, Crim. No. 01-455-A (E.D. Va. June 11, 2002). Moreover, experts retained by the defense expressed "serious reservations" about his competency to stand trial. *Id.* at 5. It was against this backdrop that the United States

Relatedly, it is clear that the Court's references in *Faretta* to "*deliberate* disruption" and "*serious* and obstructionist *misconduct*," 422 U.S. at 834 n.46 (emphasis added), were not mere surplusage. *Illinois* v. *Allen*, *supra*, on which *Faretta* relied for this proposition, emphasized States' obligation to respect the Sixth Amendment right to the maximum possible extent even under challenging circumstances. *Allen* held that a trial court may remove a defendant from the courtroom—and thereby abridge his Sixth Amendment right to confront his accusers—*after* he has "insist[ed] on conducting himself in a manner so

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argued that the "[t]he standard for competency to stand trial is the same as the standard for competency to waive counsel," Gov't Position on Competency & Def.'s Self-Representation at 4, *Moussaoui*, *supra* (June 7, 2002), and urged that a defendant's request to proceed *pro se* "should not be denied because of limitations in the defendant's education, legal training *or language abilities*," *id.* at 16-17 (emphasis added).

The *Moussaoui* case also demonstrates the adequacy of the recognized rule allowing courts to terminate self-representation by defendants who refuse to conform to the rules of courtroom decorum. In such a highly publicized trial—one in which the government's interest in "the public's perception of the fairness of the judicial system," U.S. Br. 19, could hardly be greater—Judge Brinkema upheld Moussaoui's choice to represent himself for seventeen months before his continued filing of abusive and frivolous pleadings led her to terminate self-representation and appoint standby counsel to take over his defense. Order, *Moussaoui*, *supra* (Nov. 14, 2003). That measured approach—which did not compromise the fairness or perceived fairness of the proceedings—is a far cry from the authority petitioner seeks to deny prospectively any measure of self-representation to a broad (and ill-defined) class of defendants.

disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom," 397 U.S. at 343, and *after* he has been "repeatedly warned" that he will be removed, *id.* at 346. Even then, the defendant must be "constantly informed" that he is free to return after giving up his disruptive behavior. *Ibid.*

d. Petitioner's attempt (Br. 35-36) to derive support from *Wheat* fares no better.

Wheat did not involve the *Faretta* right at all, but rather whether the distinct Sixth Amendment right to the assistance of counsel required a trial court to accept a defendant's decision to proceed through a lawyer whose representation of a co-defendant raised a potential ethical conflict. See 486 U.S. at 163; U.S. Br. at 12 n.5, *Wheat*, *supra* ("*Faretta* * * * has nothing to do with the choice of counsel.").

Moreover, the "limitation" petitioner urges the Court to endorse bears no resemblance to the one upheld in *Wheat*. The trial court did not hold that Wheat (or some class of defendants of which he was a part) was categorically disabled from exercising the right to proceed through chosen counsel, but rather that representation by the particular attorney selected would raise ethical concerns. 486 U.S. at 163-164. Arguably, this was not an abridgment of the Sixth Amendment right at all—the right to choose counsel is always limited to those attorneys who are entitled to practice before the court. In any event, the defendant's *Faretta* right (to choose whether to proceed with second-choice counsel or *pro se*) remained wholly intact. Here, by contrast, the "*independent* interest in" enforcing "the ethical standards of the [legal] profession," *id.* at 160

(emphasis added), is not implicated, and the right to self-represent was not "limited"; it was *eliminated.* And Wheat was not forced to proceed through government-selected counsel, whereas Edwards was required to proceed through court-*imposed* counsel, *i.e.*, the precise evil against which the right is meant to protect. See *Faretta*, 422 U.S. at 834.

In any event, in *United States* v. *Gonzalez-Lopez*, 126 S. Ct. 2557 (2006), the Court reaffirmed that *Wheat* does not confer open-ended discretion to interfere with a defendant's selection between his two top-choice attorneys. The Court treated as self-evident that the Sixth Amendment (and *Wheat*) would not permit a court, in the interest of "fairness," to require a defendant to be represented at trial by a second-choice attorney who was "better" than his first choice: "[T]he right to counsel of choice * * * is the right to a particular lawyer *regardless of comparative effectiveness.*" 126 S. Ct. at 2563 (emphasis added); *ibid.* ("Deprivation of the right is 'complete' when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received.").

II. LIMITING THE RIGHT OF SELF-REPRESENTATION TO THOSE WHO COMMUNICATE EFFECTIVELY IS NEITHER NECESSARY NOR CONSTITUTIONALLY PERMISSIBLE

Petitioner proposes that mentally competent individuals who, for a variety of reasons, are unable to communicate effectively should not have a Sixth Amendment right to refuse representation by counsel, even where their waiver of assistance is

knowing and voluntary. In support of that novel proposal, petitioner cites considerations of "fundamental fairness," Br. 29, 40, and relies heavily on anecdotal evidence from notorious instances of self-representation, *id.* at 30-33. Imposing representation, petitioner insists, is justified, because communication ability is necessary to "persua[sion]," *id.* at 21—which it claims is "the entire point of [a] trial," *ibid.*—and to the effective exercise of constitutional fair trial rights, see *id.* at 28.

As explained above (pp. 18-34, *supra*) the linchpin of that argument—that, under *Faretta* and its progeny, a defendant's inability to mount an effective *pro se* defense is grounds for eliminating that right altogether—is untenable. And, as explained below (pp. 49-54, *infra*), the trial court here did not even purport to apply petitioner's proposed rule; to the contrary, its rejection of Edwards's waiver of counsel was entirely conclusory. But even on an abstract plane, petitioner's suggested reinterpretation of the Sixth Amendment must be rejected.

Petitioner's proposal cannot be redeemed by appeals to the States' interest in avoiding "spectacles," U.S. Br. 17, or by professing concern for fairness and reliability. A regime that sought genuinely to further those interests would look nothing like the one petitioner and its *amici* urge here, whereby concern for "fairness" to a "helpless" defendant, Pet. Br. 34, grants States unchecked discretion to conduct proceedings that, for present purposes, they have labeled "farcical" and "fundamentally unfair," *id.* at 26. And whatever public interest there may be in "testing," *id.* at 33, the prosecution's case, it is the essence of our system of

criminal justice that decisions whether to exercise trial rights that advance fairness and reliability belong exclusively to the defense and that the defendant is free to put on no case at all. In any event, even where genuine public interests are at stake, wholesale deprivations of constitutional rights like the one defended here are tolerated only when the government's purposes are compelling and cannot be achieved by less restrictive means.

A. The Government May Not Promote Reliability And Fairness By Requiring Competent, But Disabled, Defendants To Exercise Certain Constitutional Rights And Relinquish Others

Petitioner's argument rests on an extraordinary chain of reasoning: (1) because society has an interest in accurate and reliable verdicts; and (2) because this Court has recognized that many of the rights conferred on criminal defendants advance that interest; it follows (3) that a State may compel a defendant to exercise or forgo constitutional rights (like the *Faretta* right here) when the State believes (or asserts) that doing so would render a verdict more credible, reliable, or "fair."

But whatever may be the perception of a verdict rendered where a defendant does not avail himself of the "tools" conferred by the Constitution, the government may not *require* him to deploy them. That is no less true when a mentally competent person who has difficulty communicating elects to proceed *pro se*, knowing fully that his problem will limit his ability to make effective use of some (or many) of these rights. And petitioner is entirely

wrong to claim that generic interests in the pursuit of "fair and legitimate" verdicts, Br. 28, demand that a defendant put on (what a State believes to be) a more effective—or even minimally effective—defense. As *Godinez* made clear, the trial of a defendant who elects to proceed *pro se* but cannot meet a heightened competency test is not fundamentally unfair.

1. When the Court stated in *Faretta* that "defense tools guaranteed by the [Sixth] Amendment shall be an aid to a willing defendant—not an organ of the State interposed between an unwilling defendant and his right to defend himself personally," 422 U.S. at 820, it was not breaking new ground. Rather, it was affirming a constitutional first principle: Our adversarial system of justice presupposes that justice, reliability, and legitimacy are best served by providing the accused with a full and fair opportunity to test the prosecution's case and the autonomy to decide how and whether to do so. Our system is not an inquisitorial one, in which "rights" afforded the accused are subsidiary to the societal interest in convicting the guilty and acquitting the innocent.

As this Court has held repeatedly, criminal defendants may entirely forgo their rights to challenge the evidence against them (so long as their waiver is voluntary and intelligent). See, *e.g.*, *Boykin* v. *Alabama*, 395 U.S. 238, 242-243 & n.4 (1969). Likewise, when a defendant does not plead guilty, all he is obliged to do is be a party to a trial, at which the State is compelled to persuade the finder of fact of his guilt. Contrary to petitioner's assertion, a defendant does not—by deciding "to stand trial rather than to plead guilty"—undertake to "persuade the court or jury of [anything]," Pet. Br. 21. Nor is the "entire

point of the trial * * * lost," *ibid.*, when the defendant elects to put the government to its proof. Compare *id.* at 33 (impugning trial where defendant has "only * * * the unlikely prospect that the government will unilaterally fail to prove its case") with *Florida* v. *Nixon*, 543 U.S. 175 (2004) (upholding verdict where counsel effectively conceded guilt in capital case).

2. The same goes for petitioner's list of individual "components of a fair criminal trial," Br. 27. There is no disagreement that the Constitution requires that criminal defendants be provided, among other things, the opportunity to confront witnesses, to make opening and closing statements, and to object to the admissibility of evidence—or that those "tools" advance both fairness and accuracy. But petitioner's claim that "the validity and accuracy of the verdict become questionable" "[w]hen the defense does not utilize these tools, or does so only incoherently," Br. 28, is wrong. Under our system, the "overall fairness of the modern criminal trial," Pet. Br. 27, depends on whether a defendant is afforded the *opportunity* to test the prosecution's case, not whether he has *actually exercised* his various defense rights. See, *e.g.*, *Herring* v. *New York*, 422 U.S. 853, 862 (1975) (highlighting importance of the "opportunity" to make closing statement); *David* v. *Alaska*, 415 U.S. 308, 315-316 (1974) (main purpose of the Confrontation Clause "is to secure for the opponent the *opportunity* of cross-examination") (emphasis added) (citation omitted); see also U.S. Br. at 14-15, *United States* v. *Crosby*, 506 U.S. 255 (1993) (No. 91-6194) (arguing that the Sixth Amendment "ensures that the defendant has the right to confront witnesses if he

chooses; it does not require that he exercise that right").

That is why this Court has repeatedly upheld verdicts where defendants knowingly and voluntarily waived rights that promote fairness and accuracy. See *United States* v. *Mezzanatto*, 513 U.S. 196, 212 (1995) (Souter, J., dissenting) (explaining that the right to counsel typifies the "personal rights, including constitutional ones, that have been accepted time out of mind as being freely waivable"); *Godinez*, 509 U.S. at 392 (permitting defendant to "discharge his attorneys and change his pleas to guilty" so as to "prevent the presentation of mitigating evidence at his [capital] sentencing"); *Peretz* v. *United States*, 501 U.S. 923, 936 (1991) ("The most basic rights of criminal defendants are * * * subject to waiver.").

The only support petitioner offers for the claim that the failure to utilize available trial "tools" casts doubt on a verdict's validity are, strangely enough, cases reversing convictions based on a *lawyer's* failure to exercise his client's trial rights. See Pet Br. 28-29. The verdicts at issue were overturned not out of generic concern for public legitimacy (indeed, in each one, reversal was resisted strenuously by the government), but rather because the *defendant's* distinct right to effective assistance of counsel was violated. That right, of course, is one that self-representing defendants knowingly and voluntarily surrender. See *Faretta*, 422 U.S. at 834 n.46. Tellingly, in cases where the defendant was involved in the choice to forgo a right, courts are extraordinarily reluctant to second-guess the outcome and find a constitutional violation—even where the

"failure" might have substantially affected the outcome. See, *e.g.*, *Schriro* v. *Landrigan*, 127 S. Ct. 1933, 1941 (2007) (because capital defendant instructed counsel not to offer any mitigating evidence, "counsel's failure to investigate further could not have been prejudicial under *Strickland*").

Because petitioner ignores the basic rule that States' interest in "valid" verdicts does not authorize them to force defendants to use particular tools, it makes little effort to explain why a fundamentally different rule is permissible for disabled individuals. But the one explanation it does suggest is irretrievably flawed. Where communication limitations are involved, the State posits, the defendant who represents himself is "unintentionally" waiving his right to a fair trial, Br. 33, and the government has an interest in protecting against this. But that contradicts the premise of this case: that Edwards is mentally competent, and that his decision was knowing and voluntary. See Pet. Br. 3.[9]

3. Generic invocations of "fundamental fairness" as a basis for denying the right of self-representation (Pet. Br. 29, 40; U.S. Br. 8) fare no better. First, that assertion is flatly inconsistent with this Court's decision in *Godinez*, which held that due process is

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[9] Carried to its logical conclusion, petitioner's reasoning would equally justify overruling a defendant's improvident decisions concerning whether to cross-examine, to make a closing statement, or take the stand. See *Riggins* v. *Nevada*, 504 U.S. 127, 139-140 (1992) (Kennedy, J., concurring in judgment) ("Competence to stand trial is rudimentary, for upon it depends the main part of those rights deemed essential to a fair trial, including * * * the right to testify on one's own behalf.").

not offended by allowing a defendant who knowingly and voluntarily waives assistance of counsel to proceed *pro se*, so long as he satisfies the *Dusky* competence standard. See *Godinez*, 509 U.S. at 399-402. As this Court has repeatedly explained, "due process" and "fundamental fairness" are synonymous. See *Reno* v. *Koray*, 515 U.S. 50, 65 (1995) (Ginsburg, J., concurring); *California* v. *Trombetta*, 467 U.S. 479, 485 (1984). But *Godinez* held that it is not "fundamentally unfair" to convict a (hypothetical) *pro se* defendant unable to mount a "lucid defense," Pet Br. 25, and petitioner has *not* asked the Court to overrule *Godinez*.[10]

Moreover, under almost any circumstances, a guilty verdict rendered at trial under a "proof beyond a reasonable doubt" standard will ensure fairness to the defendant at least as well as one reached by agreement. See *Nixon*, 543 U.S. at 188; *Santosky* v. *Kramer*, 455 U.S. 745, 755 (1982) (explaining that the "beyond a reasonable doubt" standard minimizes risk of "erroneous convictions"). If the conviction and death sentence imposed on the defendant in *Godinez* without any consideration of mitigating evidence does not offend "fundamental fairness," it cannot seriously be argued that such an interest supports imposing unwanted counsel on a defendant who rejects a plea offer and elects to proceed to trial.[11]

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[10] As the United States has recently recognized, the fact that self-representation is respected even though it "usually harms the defense" illustrates "that it reflects autonomy concerns *above* trial-fairness interests." U.S. Br. at 10, *Gonzalez-Lopez*, *supra* (emphasis added).

[11] To the extent the United States (Br. 13) reads *Sell* v. *United States*, 539 U.S. 166 (2003), as recognizing a free-

Indeed, it is telling that, as noted above (p. 27, *supra*), the lead state *amicus* sought to affirm the capital sentence of a defendant who had represented himself at trial and refused to offer any mitigating evidence by urging the opposite position from the one it advances here out of supposed "fairness" to Edwards. See Appellee Br. at 18, *State* v. *Jordan*, *supra* (citing *Godinez* for the proposition that "[t]he standard of competence to waive the right to counsel is the same as the standard for competency to stand trial"). Similarly, petitioner and the state *amici* have argued for admitting the confessions of mentally ill

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standing governmental "fairness" interest that could warrant depriving a defendant of his Sixth Amendment rights, it seriously errs. *Sell* involved the government's power to involuntarily medicate incompetent defendants; the fairness "interest" it referenced was in fact a limitation on the acknowledged governmental interest in bringing defendants to trial. *Id.* at 180. Because it is "unfair"—*i.e.*, unconstitutional—to try a defendant who is not competent, see *Dusky* (or one seriously impaired by drug side effects, see *Riggins*, 504 U.S. at 142-145), *Sell* explained, the prospect that medication might not work as intended was a "circumstance" that could "lessen" the government's interest in overriding a defendant's refusal of medication. 539 U.S. at 180.

Moreover, *Sell* emphasized the importance of exhausting less-restrictive alternatives before a defendant's constitutionally protected interest may be impinged upon, 539 U.S. at 181, and required detailed, relevant findings on both the defendant's present mental state, *id.* at 184-186, and the government's actual interests. Such a measured response highlights the deficiencies of the trial court's casual deprivation of Edwards's Sixth Amendment rights here. See pp. 49-54, *infra*.

defendants;[12] insisted on the validity of mentally ill individuals' consent to searches and seizures;[13] and vigorously resisted claims of ineffective assistance of counsel from mentally ill defendants in cases where the representation afforded was decidedly inadequate.[14] Thus, States' desire to elevate "fairness" for mentally ill defendants rings hollow where, as here, their professed concern coincides neatly with their ever-present interest in upholding a conviction.[15]

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[12] See, *e.g.*, *Jackson* v. *State*, 735 N.E.2d 1146, 1154 (Ind. 2000) ("defendant's borderline retardation and mental illness [does not] render [his] confession involuntary" under Indiana law); *State* v. *Downing*, No. 22012, 2004 WL 2535422, at *12 (Ohio Ct. App. Nov. 10, 2004) (admitting "confession [obtained] with trick questions and the illusory promise of mental treatment in lieu of prison").

[13] See, *e.g.*, *United States* v. *Grap*, 403 F.3d 439, 442-445 (7th Cir. 2005) (upholding Illinois's position that consent of mentally ill individual was valid).

[14] See, *e.g.*, *State* v. *McNeal*, No. 82793, 2004 WL 35762, at *2-*3 (Ohio Ct. App. Jan. 8, 2004) (rejecting claim of ineffective assistance on procedural grounds).

[15] The impression that petitioner seeks a "railroad ticket, good for this day and train only," *Washington County* v. *Gunther*, 452 U.S. 161, 183 (1981) (Rehnquist, J., dissenting) (internal quotation marks and citation omitted), is reinforced by the absence of an affirmative state policy favoring imposing counsel in cases like this one. Cf. *People* v. *Welch*, 976 P.2d 754, 777 (Cal. 1999) (applying unitary standard absent contrary instruction from State legislature). Petitioner's preference for a rule that does not require expert testimony, see Br. 26, 43, likewise seems tailor-made to pursue affirmance of a conviction where no such testimony was presented to the trial court. Cf. APA Br. 30-33.

B. Petitioner's Supposed Parade Of Horribles Proves Only That The Rule It Urges Is Unworkable

Petitioner has culled the Federal Reporters for cases that supposedly "demonstrate * * * vividly," Br. 30, the "need" for the power it seeks. *Id.* at 30-33. Leaving aside the obvious problems with relying on anecdotal evidence to shape fundamental rights, the examples petitioner selects hardly make its case.

Notably, many of the hand-picked "problematic" cases would be unaffected by petitioner's proposed rule. For example, events that petitioner identifies as deplorable in the Colin Ferguson case—the defendant's "propos[ed] conspiracy theories" and his desire to "aggressively cross-examine[]" his victims, Pet. Br. 33—do not concern incoherent communication. Likewise, petitioner's rule would not directly have restrained the "argumentative" defendant in *State* v. *Khaimov*, No. C4-97-2035, 1998 WL 747138, at *1 (Minn. Ct. App. Oct. 27, 1998), who "insult[ed] witnesses." See Pet Br. 32-33. Indeed, that defendant was "able to independently construct a reasonably compelling defense." *Khaimov*, 1998 WL 747138, at *4 (Davies, J., dissenting). And in *United States* v. *Gómez-Rosario*, 418 F.3d 90, 102 (1st Cir. 2005) (Pet. Br. 31), it was the defendant's proclivity to file frivolous motions—not his communication ability—that challenged the trial court.

Petitioner's eagerness to highlight these examples when championing a supposedly "limited" exception illustrates how readily a "coherent communication" standard would become a roving license for courts to deny self-representation to almost any defendant they would prefer not to hear from directly. Indeed,

the thread uniting these cases is not that defendants had difficulty communicating, but that they suffered from some form of mental illness, which remains poorly understood and induces discomfort. See *Olmstead* v. *L.C.*, 527 U.S. 581, 608 (1999) (Kennedy, J., concurring in judgment). The mere fact that "the public at large may *recoil*" from manifestations of a defendant's mental illness, U.S. Br. 19 (emphasis added), does not give governments a legitimate interest in concealing from scrutiny the illnesses affecting defendants they have elected to put on trial. See *Board of Trs. of Univ. of Ala.* v. *Garrett*, 531 U.S. 356, 375 (2001) (Kennedy, J., concurring) (criticizing tendency to find manifestations of "mental or physical illness * * * unsettling"). And history teaches that courts are not immune from that tendency to hide mental illness from public view. See *Tennessee* v. *Lane*, 541 U.S. 509, 535 (2004) (Souter, J., concurring) (noting judicial approval of excluding child with cerebral palsy from public school "lest he 'produc[e] a depressing and nauseating effect' upon others") (quoting *State* v. *Board of Educ.*, 172 N.W. 153 (Wis. 1919)). The rule petitioner urges here would invite such discrimination.

C. Petitioner's Proposed Rule Would Work A Drastic—And Wholly Unnecessary—Restriction of Sixth Amendment Rights

1. Although petitioner and its *amici* repeatedly describe this case as concerning "limits" and "restrictions" on the constitutional right of self-representation, Pet. Br. 36, 38, 39; U.S. Br. 7, 29, the procedure followed below must be recognized for what it is: a complete deprivation of the right recognized in

Faretta. Indeed, it might fairly be said that, were petitioner to prevail, the class of persons encompassed by such a broad, imprecisely formulated rule—those who, by reason of mental illness, physical disability, limited education, illiteracy, or diminished English-language proficiency, lack "ability" to "communicate effectively," Pet. Br. 30—would have *no* Sixth Amendment right of self-representation.

This extraordinary, wholesale elimination of a constitutional right is entirely unnecessary to achieve any substantial state interest. If the prospect of trying an impaired defendant offends a particular State's sense of "fairness," it may raise its standard for competency to stand trial above the *Dusky* minimum. See NACDL Br. 3. Petitioner's effort to depict its proposal as a mere "supplement" to *Dusky*, Br. 22, glosses over the fundamental difference between restraining the government's power to try a defendant, as *Dusky* does, and empowering the government to deny a constitutional right.

Moreover, when States decide to try individuals electing to represent themselves, courts have ample means at their disposal—short of forcing unwelcome representation—to assure that trial proceedings are fair and orderly and that verdicts are accurate. *Faretta* itself recognized the authority to terminate self-representation when a defendant "abuse[s] the dignity of the courtroom." 422 U.S. at 835 n.46. Likewise, *Faretta* highlighted (and *McKaskle* reaffirmed) States' power to "appoint a 'standby counsel' to aid the accused if and when the accused requests help, and to be available to represent the accused in the event that termination of the defendant's self-representation is necessary." *Ibid.*

By helping to "explain and enforce basic rules of courtroom protocol," *McKaskle*, 465 U.S. at 184, standby counsel helps advance the public interest in efficiency and procedural regularity, while preserving the core of the *Faretta* right: the defendant's "actual control over the case" and "the jury's perception that the defendant is representing himself," *id.* at 178.

2. Indeed, there are numerous examples of courts employing far less restrictive means when addressing concerns raised by the fundamental right at issue here. In *Gómez-Rosario*, for example, the trial court, troubled by the defendant's filing of repetitive and frivolous motions, cut off the defendant's *pro se* rights only with respect to motions practice and ordered "standby" counsel to review and approve future filings. 418 F.3d at 97-101. Notably, the defendant was allowed to participate in jury selection and address the court.

And, as *Godinez* recognized, States may express their concerns about defendants with disabilities proceeding *pro se* by taking special care at the waiver stage to ensure that such individuals fully appreciate the value of effective communication and the disadvantages under which they might labor at trial. See 509 U.S. at 400-401. Such an approach assures that defendants will not "unintentionally" forfeit fair-trial rights, Pet. Br. 33—and might dissuade some defendants from undertaking especially difficult *pro se* defenses—but it does so without compromising the principle that all defendants have Sixth Amendment rights.

3. Petitioner's assurances notwithstanding, its proposal is no "limited" exception targeted at cases where self-representation is "most problematic." To

the contrary, petitioner specifically endorses denying self-representation to defendants with speech impediments, physical disabilities, and limited English proficiency or educational attainment. Br. at 25-26 & n.2. Such conditions have nothing to do with *competence* as this Court has historically understood it. See *Godinez*, 509 U.S. at 401 n.12. And, as noted above, there is reason to fear that petitioner's rule lends itself to broad and discriminatory application. Indeed, Edwards himself, whose ordered thought processes and intelligible speech the State championed when pursuing his competence to stand trial, is hardly an obvious candidate for a limited rule disqualifying the "incoherent." Remarkably, the closest the State comes to fleshing out its "proposal" is a brief footnote that references the exceedingly broad standard applied in Wisconsin's courts and then urges that the rule should be broader still. Br. 25 n.2 (citing *State* v. *Klessig*, 564 N.W.2d 716 (Wis. 1997)).

4. Indeed, experience under the Wisconsin rule is what one might expect: Trial judges, who (understandably) prefer trials with attorneys to those with *pro se* defendants—and whose rulings denying self-representation receive highly sympathetic review on appeal—take an unduly narrow view of what it means to communicate effectively. For example, Wisconsin courts have held that a 25-year-old high school graduate—who had never been treated for any mental illness and who was specifically found to be "able to understand criminal proceedings, understood legal terminology and trial procedures, was not delusional and was of normal intelligence," *Gomez* v. *Berge*, No. 04-C-17-C, 2004 WL 1852978, at *3 (W.D.

Wis. Aug. 18, 2004)—was incompetent to represent himself. His problem? As described by the federal habeas court, "[b]ased on the way Gomez was conducting his defense, the [Wisconsin trial] court found that Gomez had 'no conception' of the difference between fact and expert testimony." *Id.* at *4.

Other jurisdictions applying some variant of a coherent-communication standard have denied self-representation to defendants who read poorly, speak English with a heavy accent, or stutter. In *People* v. *Manago*, 269 Cal. Rptr. 819, 821 (Ct. App. 1990), for example, the court upheld a trial court's decision to force counsel on a defendant with a seventh-grade education and ninth-grade reading level. The belief that the defendant could not "effectively communicate his thoughts," *id.* at 823, apparently rested entirely on the trial court's summary statement that the defendant "has rather low verbal skills, [is] not an articulate gentleman and it would * * * be very, very difficult for [him] to question witnesses, to be able to intelligently question the jurors, to challenge the jurors for cause or to exercise peremptory challenges," *id.* at 821.

III. UNDER ANY PLAUSIBLE UNDERSTANDING OF THE SIXTH AMENDMENT—INCLUDING PETITIONER'S—EDWARDS'S RIGHTS WERE VIOLATED

Even if the Constitution permitted States to impose a heightened competency threshold—indeed, even if it allowed Indiana's peculiar proposed exception—the judgment below must be affirmed. That is because (i) the trial court did not even

articulate the "coherent communication" (or any other) standard; (ii) the trial court made no particularized findings regarding Edwards's capacity for self-representation, nor did any of the expert reports or testimony opine on that subject; (iii) the trial court relied expressly on evidence concerning Edwards's *pre-treatment* mental condition; and (iv) in any event, Edwards was manifestly capable of "coherent" communication at trial.

First, the trial court did not even purport to apply petitioner's "coherent communication" standard. Rather, it alluded only to an undefined "third exception" to the Sixth Amendment right, one that entitled the State to deny effect to waivers based on unspecified "abilities," at least where defendants with mental illness are concerned. J.A. 527a. Thus, regardless of whether a "coherent communication" exception would be constitutional, the trial court's denial of Edwards's self-representation right remains invalid.

Second, the trial court did not make a single finding regarding Edwards's abilities as of his December 2005 retrial. There was no determination that Edwards could not "communicate coherently," or that "fairness" required overruling his choice, nor did the trial court undertake a "particularized analysis" of whether Edwards's "conduct of the trial would frustrate important governmental interests," U.S. Br. 7. In extinguishing Edwards's constitutional right, the trial court engaged in no "particularized analysis" whatsoever—it merely referenced Edwards's history of psychiatric illness and the importance of the "abilit[y]" to self-represent. J.A. 527a.

Indeed, none of the expert reports submitted during the protracted pre-trial proceedings specifically examined Edwards's ability to meet a particular standard of competence for self-representation. While we disagree strongly with *amici* American Psychiatric Association, *et al.* that ability-based denials are constitutional, there is no disputing that any such analysis would require determinations "significantly" beyond those made in assessing competency to stand trial. APA Br. 27. As the APA *amici* observe, none of the experts who opined on Edwards's competency to stand trial "[]ever focused on the[se] additional specific capabilities." *Id.* at 30.

Third, the trial court plainly erred in relying on evidence bearing on Edwards's condition and abilities before receiving treatment. As the APA *amici* correctly note, "anti-psychotic medications often eliminate the kinds of cognitive and communication incapacities that bear on self-representation capacity." APA Br. 35 n.15. Yet, in requiring Edwards to proceed through counsel, the trial court expressly relied on reports dating back to February 2000—more than *four years* before Edwards's condition-improving treatment. Petitioner commits that same error, claiming that expert testimony from 2000 to 2003 establishes that Edwards was unable to communicate in 2005. Br. 43-45. Just as it is a defendant's *present* mental state that determines competency to stand trial, *Drope* v. *Missouri*, 420 U.S. 162, 181 (1975), it would be obviously impermissible to assess "competency" for self-representation based on *past* difficulties.

Finally, and in any event, the record here does not show that Edwards was incapable of "coherent communication." That much is clear from his colloquies with the trial court when invoking his right of self-representation. As set forth above (pp. 6-9, *supra*), Edwards clearly explained his concern that appointed counsel had spent insufficient time with him preparing for the first trial. J.A. 509a-510a. Before retrial, he was likewise lucid in explaining his conflict with counsel over which defense theory to advance. J.A. 523a.

Equally important, the lone expert report prepared *after* Edwards had received the medical care that "greatly improved" his mental condition, J.A. 231a, stands starkly against efforts to depict him as incapable of "coherent communication" in 2005. After detailing the extensive treatment Edwards received during his sixth-month inpatient stay at Logansport, Dr. Sena's July 27, 2004, report described his "Present Condition" as follows:

- [Edwards] shows good attention. His memory is good in all spheres (immediate, recent, and remote). * * *
- He communicates very well. His speech is easy to understand.
- His thought processes are coherent.
- There is no evidence of present or recent hallucinations or delusions.

J.A. 231a-232a. Dr. Sena further noted that Edwards "passed the final written examination in Legal Education II" by "answering 61 questions correctly out of 75," J.A. 231a, and described Edwards as able

"to appraise the legal defenses available to him," J.A. 232a; presenting "no[]" level of "unmanageable behavior," *ibid.*; "demonstrat[ing] an excellent understanding of courtroom procedures," J.A. 233a; able "to appraise the likely outcome of the charges against him," J.A. 234a; and having "the capacity to challenge prosecution witnesses realistically" and "to testify relevantly," *ibid.* Dr. Sena concluded that Edwards possessed "good communication skills, cooperative attitude, average intelligence, and good cognitive functioning." J.A. 235a. Those findings, made by a state psychiatrist after a detailed assessment of Edwards's medical history and several hours of interviews with Edwards, would preclude a court from denying Edwards's self-representation under petitioner's proposed standard—or any other.

Rather than reckon with Dr. Sena's conclusions (on which the State relied in putting Edwards on trial), petitioner lards its brief with quotations from some of Edwards's written submissions to the trial court. Many of these, of course, significantly predate Edwards's 2004 treatment—*i.e.*, before he was competent *to be tried*. And the State makes no effort to explain why difficulty in *written* expression would support extinguishing self-representation *in toto* for a defendant who the record shows had no difficulty making himself understood when *in the courtroom*. See APA Br. 23 (noting possibility of having standby counsel draft or review written submissions).[16] If the

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[16] Even with respect to written filings, there is far less to the State's claims of "inability to communicate" than meets the eye. The State, by describing Edwards's motion to dismiss as "coherent" and "logical," Br. 47, concedes that he did not

Constitution in fact permits a "communication" exception and if Indiana has embraced it, the *trial judge* made no attempt to appraise Edwards's abilities in this area, let alone address any limitations in a manner respectful of his Sixth Amendment rights.

IV. PETITIONER'S REQUEST TO OVERRULE *FARETTA* IS BOTH UNTIMELY AND UNSOUND

Petitioner's alternative suggestion (Br. 48-61) that *Faretta* should be overruled need not detain the Court for long. That extraordinary request—to repudiate a firmly established and nationally significant decision—is not properly before the Court here. In any event, petitioner fails to make a minimally persuasive argument that *Faretta* was wrongly decided, let alone the special showing the Court requires before discarding settled precedent. Notably, not a single *amicus* participating in this case (including 19 States and the federal government) has joined petitioner's suggestion. This Court should likewise reject it.

A. *Faretta*'s Correctness Is Not Properly Presented

This Court's Rule 14.1(a) expressly states that "[o]nly the questions set out in the petition or fairly included therein, will be considered by the Court." The State's petition nowhere asks this Court to overrule *Faretta*. To the contrary, the petition stated

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completely lack the ability to communicate coherently in writing.

that "[t]his case asks whether *the right* to self-representation recognized in *Faretta* * * * *extends* to a defendant whose mental impairments render him wholly incapable of presenting a coherent and meaningful defense." Pet. 2 (emphasis added). Nor did the State's initial (tendentious) Question Presented suggest an attack on *Faretta*'s validity. See *id.* at i ("May a criminal defendant who, despite being legally competent, is schizophrenic, delusional, and mentally decompensatory in the course of a simple conversation, be denied *the right* to represent himself at trial when the trial court reasonably concludes that permitting self-representation would deny the defendant a fair trial?") (emphasis added). Likewise, this Court's reformulation did not call *Faretta* into question. See Order List, Dec. 7, 2007, 128 S. Ct. 741 ("May States adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?").

As numerous decisions of this Court make clear, the reasons for not deciding questions "smuggle[d] * * * into a case * * * after the grant of certiorari," *Norfolk Southern Ry.* v. *Sorrell*, 127 S. Ct. 799, 805 (2007), apply with special vigor when the request at issue is to reconsider a precedent of this Court. See, *e.g.*, *Alabama* v. *Shelton*, 535 U.S. 645, 661 n.3 (2002); *South Cent. Bell Tel.* v. *Alabama*, 526 U.S. 160, 171 (1999).

What is more, until petitioner's merits brief, this case had focused on whether a discrete class of criminal defendants (*i.e.*, those with particular manifestations of mental illness) enjoy *Faretta* rights. See APA Br. 26 (cases are "relatively rare"); Erica J. Hashimoto, *Defending the Right of Self-*

Representation: An Empirical Look at the Pro Se Felony Defendant, 85 N.C. L. Rev. 423, 428 (2007) ("[T]he vast majority of felony pro se defendants * * * do not exhibit overt signs of mental illness."). Even on that sub-issue, petitioner has marshaled only the most meager evidence (indeed, the record as to this particular defendant's abilities is seriously deficient, see pp. 50-54, *supra*). On the broader issue of *Faretta*'s operation in the "vast majority" of cases, petitioner presents nothing that would support such a drastic response. Cf. *Martinez*, 528 U.S. at 164 (Breyer, J., concurring) (any reconsideration of *Faretta* should await "empirical research" providing a "strong factual basis for believing" that the self-representation right is "counterproductive," "in general"). And it is telling that the parties having direct experience with this right—including those *amici* filing briefs in this case—have not joined petitioner's request.

B. There Is No Reason, Let Alone Any Special Justification, To Reconsider *Faretta*

In any event, there is no merit to the State's assertion that *Faretta* should be overruled. First and foremost, the decision is correct. As we have explained (pp. 18-20, *supra*), Justice Stewart's opinion for the Court exhaustively canvassed the structural and historical foundations of the right. See 422 U.S. at 812-832. And *Faretta* considered—but rejected—the very same historical arguments petitioner now advances. Indeed, far from unearthing fresh evidence disproving *Faretta*'s "historical" premises, cf. *Erie R.R.* v. *Tompkins*, 304

U.S. 64, 72-73 (1938) (overruling *Swift* v. *Tyson*, 41 U.S. (16 Pet.) 1 (1842), in part because of intervening historical research), the State literally asks the Court here to re-read California's (unsuccessful) 1974 brief, see Pet. Br. 52 n.5, in the apparent hope that those same arguments will get a sympathetic hearing now.

Nor has the *Faretta* decision been gathering dust in the intervening decades. As detailed above, its core holding has been explored and reaffirmed repeatedly in this Court's self-representation cases, and its understanding of the Sixth Amendment has been integrated into the Court's analysis of distinct, but related questions. See, *e.g.*, *United States* v. *Vonn*, 535 U.S. 55, 73 n.10 (2002); *Rock* v. *Arkansas*, 483 U.S. 44, 52 (1987); *Gannett Co.* v. *DePasquale*, 443 U.S. 368, 382 n.10 (1979). Likewise, the autonomy postulates on which it rests have hardly been overtaken with time, cf. *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 174 (1989) (noting that courts sometimes revisit questions in light of changes in the "prevailing sense of justice"). If anything, society's commitment to protecting the dignity and autonomy of individuals with mental illness has burgeoned. See *Olmstead*, 527 U.S. at 608 (Kennedy, J. concurring in judgment); *Garrett*, 531 U.S. at 375-376 (Kennedy, J., concurring).

Moreover, the *practical significance* of the federal constitutional right upheld in *Faretta* should not be overlooked. Although the share of defendants who *invoke* the right is relatively modest, the number who benefit from and "rely on" it is incalculably larger. As even this case illustrates, this Court's recognition that every defendant has a *right* to proceed *pro se* exerts force in relationships between defendants and

the attorneys (often court-appointed) representing them, helping reinforce norms of client control. See *Jones* v. *Barnes*, 463 U.S. 745, 751 (1983). Thus, even defendants who do not seriously contemplate self-representation derive important benefits from the principle that the defense is theirs to make.

And while there have been expressions of "dismay" about the right of self-representation in general, see *Martinez*, 528 U.S. at 164 (Breyer, J., concurring), some recent "empirical research," *id.*, gives reason to believe that the right works better "in practice" than has been supposed, see generally Hashimoto, *supra*. And it should not be forgotten that trials involving mentally troubled defendants are likely to arouse concern under any set of legal rules. See *Riggins* v. *Nevada*, 504 U.S. 127, 142-144 (1992) (Kennedy, J., concurring in judgment). The lack of support for petitioner's call to overrule *Faretta* belies any suggestion that this longstanding regime works an undue burden on prosecutors, courts, or the general public, and it is highly doubtful that whatever rule were to emerge in *Faretta*'s place would be *more* workable. See U.S. Br. 25 n.4.

Petitioner's only attempt to carry its "special justification" burden is to claim (Br. 56) that *Faretta*'s foundations have been "eroded" by intervening decisions. As explained above (pp. 28-34, *supra*), the cited decisions have *reaffirmed* *Faretta*'s core rationale and its continued vitality, and the Court has looked to *Faretta* when related issues have come before it.

Although petitioner relies (Br. 58-61) on dicta in *Martinez* to posit that the right to counsel undermines the right of self-representation, *Faretta*

post-dated *Gideon* v. *Wainwright*, 372 U.S. 335 (1963), by more than a decade. And though this Court did not decide *Strickland* v. *Washington*, 466 U.S. 668 (1984), until after *Faretta*, the former decision was no watershed: The right to effective assistance of counsel had been upheld by numerous courts of appeals before *Faretta*, see, *e.g.*, *Moore* v. *United States*, 432 F.2d 730 (3d Cir. 1970); *Peyton* v. *Coles*, 389 F.2d 224 (4th Cir. 1968); *MacKenna* v. *Ellis*, 280 F.2d 592 (5th Cir. 1960), and had been foreshadowed in this Court's pre-*Faretta* decisions, see *McMann* v. *Richardson*, 397 U.S. 759 (1970); see also *Gonzalez-Lopez*, 126 S. Ct. at 2561-2563 (rejecting argument that recognition of the right to effective representation limited or supplanted the Sixth Amendment right to "counsel of choice").

CONCLUSION

The judgment of the Supreme Court of Indiana should be affirmed.

Respectfully submitted.

DANIEL R. ORTIZ
MICHELLE D. MORRIS
University of Virginia
School of Law
Supreme Court
Litigation Clinic
580 Massie Road
Charlottesville, VA
22903
(434) 924-3127

MICHAEL R. FISHER
151 N. Delaware Street
Suite 200
Indianapolis, IN 46204
(317) 327-3404

MARK T. STANCIL*
Robbins, Russell,
Englert, Orseck,
Untereiner & Sauber
LLP
1801 K Street, N.W.
Suite 411
Washington, D.C. 20006
(202) 775-4500

DAVID T. GOLDBERG
Donahue & Goldberg,
LLP
99 Hudson St., 8th Fl.
New York, NY 10013
(212) 334-8813

**Counsel of Record*

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Petitioner,

v.

AHMAD EDWARDS,
Respondent.

On Writ of Certiorari to the Supreme Court of Indiana

REPLY BRIEF FOR PETITIONER

Office of the Indiana
Attorney General
IGC South, Fifth Floor
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-6201
tom.fisher@atg.in.gov

*Counsel of Record

STEVE CARTER
Attorney General
THOMAS M. FISHER*
Solicitor General
JULIE A. BRUBAKER
JUSTIN F. ROEBEL
HEATHER L. HAGAN
Deputy Attorneys General

Counsel for Petitioner

20527 378

QUESTION PRESENTED

May States adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?

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ARGUMENT

The trial court required Ahmad Edwards to have counsel at his trial on charges of attempted murder and aggravated battery because Edwards could not communicate with the court or the jury in a reliably coherent way, orally or in writing. Given Edwards's profound and obvious limitations, the court determined that counsel was necessary to ensure a fair and meaningful trial, even if at the expense of Edwards's abstract autonomy interests. In reaching this conclusion, the trial court correctly balanced the competing interests at stake, just as this Court said should happen with self-representation demands in *Martinez v. Court of Appeal*, 528 U.S. 152, 161 (2000) and *McKaskle v. Wiggins*, 465 U.S. 168, 173-74 (1984). The trial court therefore properly employed a competency standard that exceeds the standard required for standing trial articulated in *Dusky v. United States*, 362 U.S. 402, 402 (1960).

Edwards's central thesis in response to this argument is that *Faretta* creates an absolute right of self-representation at trial and that the State is attempting to "parcel" that right based on skills-based classifications. Edwards Br. 14. Listening to Edwards, one might conclude that the State seeks to require criminal defendants to have minimal education or training before allowing them the right of self-representation. Far from drawing any such general classifications, the State seeks only a narrow rule that would permit trial courts to require counsel when a criminal defendant is competent under *Dusky* yet cannot represent himself because he cannot reliably communicate in a coherent way with the court or the jury. Such a limited allowance

would hardly grant "unfettered discretion whether to recognize the right" of self-representation for mentally impaired criminal defendants. Edwards Br. 13.

The Court has never treated the *Faretta* right as absolute. Indeed, members of the Court have questioned the continuing validity of *Faretta* even as far as it goes. Accordingly, whether because *Faretta* already permits it, or whether because *Faretta* must be modified or even overruled, the Sixth Amendment permits state courts to employ a higher standard of competency for representing oneself than for standing trial.

I. Because the Right of Self-Representation is Not Absolute, States May Adopt a Higher Standard of Competence for Self-Representation than for Standing Trial

The Court's precedents amply demonstrate that the right of self-representation, like the right to first-choice trial counsel, may be limited when outweighed by important fair-trial concerns. Edwards superficially concedes that the right is not absolute, Edwards Br. 14, 29, but his central argument nonetheless is that, aside from particular exceptions expressly created therein, *Faretta* recognizes a right that absolutely cannot be overcome by countervailing state interests. Edwards Br. 36-43. The exceptions noted in *Faretta*, however, are not *sui generis*. They are based on a balancing-of-interests principle that applies here.

1. In *Faretta* itself, the Court stated that the right to self-representation is not absolute. *See Faretta v. California*, 422 U.S. 806, 834 n.46 (1975). Among other things, "[t]he right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." *Id.* Thus, *Faretta* did not treat the particular exceptions to the right it described (when the defendant disrupts the courtroom, abuses the process, or attempts to manipulate the proceedings such as by causing delay, *id.*) as following from isolated incidents of history. Rather, those exceptions reflect a general principle that important state concerns for fair and dignified trials can override a demand for self-representation. Certainly, nothing in *Faretta* indicates that the limits the Court observed there were the *only* permissible limits on the right of self-representation.

The Court has continued to recognize limits on self-representation after *Faretta*. In *Martinez*, the Court reminded that "the *Faretta* opinion recognized [that] the right to self-representation is not absolute." *Martinez v. Court of Appeal*, 528 U.S. 152, 161 (2000). And while Edwards claims that *Martinez* is irrelevant because it addressed the right to self-representation on appeal rather than at trial, Edwards Br. 30-31, the Court nonetheless observed that "[e]ven at the trial level, . . . the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." *Id.* at 162.

Furthermore, in *McKaskle*, where the Court permitted the imposition of standby counsel, the

Court did not simply rely on *Faretta*'s recognition that standby counsel may be appropriate in some circumstances. *See McKaskle v. Wiggins*, 465 U.S. 168, 178-79 (1984). Instead, the Court expressly examined standby counsel's precise role in the case and balanced the individual defendant's interest in self-representation against the societal and institutional interests in ensuring fair adversarial proceedings. *See id.* at 183-84. The *McKaskle* analysis thereby demonstrates that it is consistent with *Faretta* for a court generally to balance the government's fair-trial interests against the self-representation rights of the accused in determining the proper scope of counsel's role. Logically then, full-blown representation by counsel may be justified where, as here, the defendant has amply demonstrated his inability to conduct a defense *at all*.

2. Edwards argues that *Faretta* must necessarily bestow an inviolable right of self-representation on a defendant who cannot communicate coherently because "the history surveyed by the Court in *Faretta* yielded *no* examples of imposing unwanted counsel on the ground that the defendants' abilities were limited." Edwards Br. 21. It is equally true, however, that *Faretta* cited *no* historical examples where a defendant was entitled to self-representation despite the availability of counsel. *See Faretta*, 422 U.S. at 815-17; *see also Martinez*, 528 U.S. 156-57 & n.4. Given that *Faretta* premised the right of self-representation on the historical practice of *denying* counsel in the first place, it is wholly unremarkable that there would be no cases where the court *imposed* counsel in this particular situation.

What *is* noteworthy, however, is that, in the era when the right to counsel depended on individualized determinations of need, the Court required benefit of counsel for legally competent defendants of dubious mental capacity. In *Massey v. Moore*, 348 U.S. 105, 108 (1954), where the Court questioned whether a convicted *pro se* defendant was competent at trial, the Court allowed that "[o]ne might not be insane in the sense of being incapable of standing trial and yet lack the capacity to stand trial without benefit of counsel." It also expressly observed that "[w]e have not allowed convictions to stand if the accused stood trial without benefit of counsel and yet was so unskilled, so ignorant, or so mentally deficient as not to be able to comprehend the legal issues involved in his defense." *Id.*

Cases such as *Massey*, which is undeniably part of the historical tradition giving rise to the right of self-representation, are relevant for determining the scope of that right. Accordingly, a defendant's competence beyond the bare competence to stand trial must at some level be a legitimate (even though not compulsory, *see Godinez v. Moran*, 509 U.S. 389, 402 (1993)) consideration for state courts. *See, e.g.*, *Cappetta v. State*, 204 So.2d 913, 918 (Fla. Dist. Ct. App. 1967), *rev'd on other grounds*, 216 So.2d 749 (Fla. 1968) (cited in *Faretta*, 422 U.S. at 813 n.9, and evaluating denial of self-representation in part according to whether "unusual circumstances" such as "mental derangement" exist); *see also* CJLF Br. 7-14 (describing how, in lower court cases comprising the "consensus" view—and upon which *Faretta* relied—courts had broad discretion for rejecting self-representation demands).

3. Nor does the holding or the logic of *Godinez* foreclose the ability of States to impose a higher standard of competence on the exercise of the right of self-representation. Edwards acknowledges that "*Godinez* held that due process does not *mandate* a higher competency standard to plead guilty or waive counsel than it does to stand trial." Edwards Br. 24. But he then insists that "the Court's reasoning in reaching that conclusion makes clear that the Sixth Amendment likewise does not *permit* a higher standard for waiving counsel." Edwards Br. 24. This is not so.

In *Godinez*, the Court was speaking of "competency" only in the sense required by the Due Process Clause. *See Godinez*, 509 U.S. at 402. For that purpose, the Court said, a defendant that is competent to stand trial is competent to waive counsel and plead guilty. The Court did not hold, however, that the Due Process Clause either (1) requires the State to accept such a waiver and plea or (2) forbids a State from imposing a higher standard for accepting them. *See id.* The Court made it clear that nothing in its holding even implied an answer to those two issues when it pointedly instructed that "States are free to adopt competency standards that are more elaborate than the *Dusky* formulation." *Id.*

The lesson that Edwards erroneously ascribes to *Godinez* is that the right of self-representation is absolute except insofar as it conflicts with the guarantees of the Due Process Clause. *Godinez* nowhere says that, however, and generally speaking, the government's ability to regulate constitutionally protected rights (to which Edwards draws his own

analogy, Edwards Br. 36) is not limited to circumstances where other, conflicting rights of the individuals being regulated have higher priority. Rather, the State's other important and compelling countervailing interests are often sufficient to override exercise of a protected right. *See, e.g., Deck v. Missouri*, 544 U.S. 622, 624 (2005) (due-process right not to be shackled may be overcome by government interest in security); *Sell v. United States*, 539 U.S. 166, 179-80 (2003) (due-process right to refuse medication must give way to the government's interest in restoring the defendant's competence to stand trial in certain circumstances).

This is no less true concerning Sixth Amendment rights. *See* U.S. Br. 12-13 (citing *United States v. Scheffer*, 523 U.S. 303, 308 (1998); *Michigan v. Lucas*, 500 U.S. 145, 149-51 (1991); *Pennsylvania v. Ritchie*, 480 U.S. 39, 60-61 (1987); *Morris v. Slappy*, 461 U.S. 1, 11-12 (1983)). With respect to the right of self-representation itself, courts may require counsel when the defendant is disruptive in order to protect the integrity of the trial, or when acceding to the demand would delay the trial. *See Faretta*, 422 U.S. at 835 n.46 (explaining that "the trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct"); *see also McKaskle*, 465 U.S. at 173 (finding that the trial court can revoke a defendant's right of self-representation if he is unable "to abide by rules of procedure and courtroom protocol").

Equally significant, trial courts have *discretion* whether to deny defendants' demands in such circumstances. For example, in *Wheat*, the trial

court was permitted to impose, in the name of fairness, a procedural rule that due process does not require, even though a Sixth Amendment right was implicated. *See Wheat v. United States*, 486 U.S. 153, 163 (1988) (stressing that trial courts have wide-ranging discretion whether to accept conflict waivers by criminal defendants); *see also United States v. Gonzalez-Lopez*, 548 U.S. 140, 126 S. Ct. 2557, 2565-66 (2006) ("We have recognized a trial court's wide latitude in balancing the right to counsel of choice against the needs of fairness . . . .").

Accordingly, the logic of *Godinez* does not foreclose States from applying, for the purpose of promoting a fair trial, a higher standard of competency for self-representation than for standing trial.

4. Edwards also argues that, if the State is going to raise the competence bar for self-representation, it must also raise the bar for standing trial. Edwards Br. 46. Since all defendants are entitled to counsel, however, there is no justification for compelling the State to forfeit its right to pursue prosecution in many cases (by raising the standard for competence to stand trial to the *pro se* representation level) in order to prevent some trials from descending into farces simply because some incoherent defendants insist on representing themselves.

Moreover, this alternative ultimately might prove entirely self-defeating for a defendant who cannot meet the higher standard and whose trial is therefore deferred. Such a defendant, particularly one charged with violent crimes, may ultimately be the subject of civil-commitment proceedings

resulting in indeterminate confinement. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). At such a proceeding, the defendant would not be protected by the Sixth Amendment at all. *See Vitek v. Jones*, 445 U.S. 480, 494-97 (1980) (listing minimal due-process rights required at civil-commitment proceedings).

II. The State's Proposed Rule is a Permissible Higher Competency Standard Because Coherent Communication is Necessary for Exercising the Right of Self-Representation

The rule proposed by the State would enable trial courts to protect an incoherent defendant's primary decision to have a trial from being undermined by that defendant's secondary decision to represent himself at that trial. It is designed to ensure that *pro se* defendants have the most basic skills necessary to effectuate their decision to try their own cases. Edwards protests that the State's proposed rule would impermissibly prohibit the right of self-representation "completely" to a "class of defendants." Edwards Br. 29. The coherent-communication rule, however, has its roots in pre-*Gideon* cases requiring fact-sensitive, individualized determinations of need, not in broad classifications based on assumptions or stereotypes. It represents a narrowly tailored exception to the right of self-representation for circumstances where the defendant cannot, in the most basic functional terms, actually do what self-representation presumes he can do.

1. Edwards asserts that, in general, a trial is better than a guilty plea for arriving at the truth, and thus for serving the ends of justice and fairness. Edwards Br. 37. This is surely true if there is adversarial testing of the evidence, either as to its legitimacy or sufficiency. *See Strickland v. Washington*, 466 U.S. 668, 685 (1984) ("[A] fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding."). Yet all that matters for Edwards is that the defendant has an "*opportunity* to test the prosecution's case." Edwards Br. 38. He says that the State has no legitimate interest in whether the defendant has "*actually exercised* his various defense rights." Edwards Br. 38. And he describes a system where an incoherent defendant's self-representation demand is denied out of concern for achieving just results as "inquisitorial." Edwards Br. 37.

Given that the roots of the right at stake here lie in the inquisitorial practice of imposing self-representation, *see Faretta*, 422 U.S. at 823-24, the criticism that denying self-representation in limited circumstances is itself "inquisitorial" is particularly difficult to follow. After all, the entire point of the adversarial system is to "convict[] the guilty and acquit[] the innocent." Edwards Br. 37; *see Herring v. New York*, 422 U.S. 853, 862 (1975). Since *Gideon*, the Court has understood competent defense counsel to be a necessary component of preventing trial by inquisition. *See Gideon v. Wainwright*, 372 U.S. 335, 344-45 (1963). The Court has held to this principle even in the wake of *Faretta*. *See, e.g., Martinez v. Court of Appeal*, 528 U.S. 152, 162 (2000). It would be no more "inquisitorial" to deny self-representation

here than it was to deny first-choice counsel (based on an overriding concern for fairness) in *Wheat*.

Edwards essentially argues that an incoherent defendant's decision to proceed *pro se* must be treated as if the defendant has, after weighing the competing values, opted to purchase the benefits of self-representation at the cost of his right to be heard at trial. There is, however, no reason to compel courts to infer such an extreme impulse on the part of all incoherent criminal defendants who wish to proceed *pro se*. Certainly that does not appear to have been Edwards's own prevailing view at the time of trial. He amply demonstrated his desire to advance his cause by means of communicating with the court, notwithstanding his inability to do so in a reliably coherent way.

The State's proposed rule relates directly to the basic functional demands that having a trial necessarily places on the defendant. Even from a defendant's perspective, there is no legitimate point in having a trial if there is no desire or intention to be acquitted. Thus, it cannot be the case, as Edwards suggests, that the only party to a trial inherently interested in persuading the court or jury of something is the government. Edwards Br. 37. The purpose of a trial is for *both* sides to attempt to persuade the factfinder that they are entitled to win. For a defendant, that is true even if it means only taking the position that the government has not met its burden. But the point of the trial is lost—or at least a trial court may decide as much—if evidence suggests that the defendant may be functionally incapable of taking even that minimal position. State's Br. 33-34; *cf. United States v. Farhad*, 190

F.3d 1097, 1105 (9th Cir. 1999) (Reinhardt, J., concurring) (*pro se* defendant asks jury to find that the government *had* met is burden).[1]

Edwards argues that, assuming the jury is properly instructed, the very existence of the reasonable-doubt standard ensures a meaningful trial even for a *pro se* defendant incapable of arguing coherently that the government has failed to meet its burden. Edwards Br. 41. That is certainly true for purposes of meeting the Due Process Clause threshold, but it is hard to see why the abstract notion of a defendant's personal autonomy is so powerful that it precludes the State from insisting that the defense be functionally capable—at least minimally so—of actuating the defendant's other (far more likely) basic trial choices, such as whether to cross-examine witnesses and to make arguments to the jury.[2]

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[1] Contrary to Edwards's suggestion, Edwards Br. 37-38, this observation is not undermined by *Florida v. Nixon*, 543 U.S. 175, 190-92 (2004), where counsel was deemed constitutionally effective even though he conceded guilt at trial in the hope of creating a more sympathetic audience for his penalty-phase arguments. The trial was not rendered useless by counsel's tactics. Rather, those tactics laid the groundwork for a reasonable penalty-phase strategy that ultimately required substantial advocacy to the jury.

[2] In fact, Edwards stresses that court-appointed counsel, who argued lack of intent to kill, thwarted his ambition to argue self-defense, a strategy that would have required actual communication to the jury, not simple reliance on a reasonable-doubt jury instruction. Edwards Br. 29 n.7; J.A. 525a. Edwards's autonomy interest in pursing this

The worst that can be said is that under the State's proposed rule there may be a few cases where the trial court unnecessarily precludes self-representation by an incoherent defendant who would choose to depend entirely on a reasonable-doubt instruction for his defense. Even that may never occur, however, given the fact-intensive inquiry that the State advocates. Regardless, trial courts should be allowed to ensure that there is a point to having a trial for those (surely far more numerous) incoherent defendants whose *pro se* defense would include actually speaking or writing to the court or jury. At the very least, a trial court should be permitted to err on the side of insisting on counsel to ensure more concrete, functional protection for the defendant at trial, rather than err on the side of vindicating the far more abstract notion of individual autonomy embodied in the right to self-representation.

2. The coherent-communication principle is also highly limited. It would not, for example, justify a trial court's denial of self-representation to a defendant who happens to suffer a mental impairment but who can nonetheless reliably communicate in a coherent way. Further, it would not justify a trial court's insistence that a *pro se* defendant make an opening statement, examine or cross-examine witnesses, assert objections, or make a closing argument. Assuming a defendant can communicate coherently, each of those decisions depends entirely on the defendant's individual

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defense would have been nullified by his patent inability to communicate it to a jury in any coherent way.

judgment, which is what *Faretta* protects. The State is not proposing a standard that turns on "feeble intellect." *See Faretta*, 422 U.S. at 833-34 & n.43 (quoting *Powell v. Alabama*, 287 U.S. 45, 69 (1932)). Where the defendant demonstrably cannot actuate his judgment to exercise those rights at trial, however, the trial court is justified in insisting that the defendant be represented by someone who can, regardless of what trial rights the defense ultimately exercises.

Furthermore, the State's coherent-communication test would not, as suggested by Edwards, permit trial courts to deny self-representation to defendants with "speech impediments, physical disabilities, and limited English proficiency or educational attainment" if their competency is not otherwise at issue. Edwards Br. 47-48. The State is merely urging a standard similar to, and therefore no more open to discriminatory abuse than, the *Dusky* standard, where courts inquire whether the defendant can communicate with counsel.

3. The coherent-communication standard, while not a constitutionally guaranteed component of due process, has roots in the historical understanding of "competency" when self-representation was commonly required. In his *Godinez* concurrence, Justice Kennedy, joined by Justice Scalia, cited two such pre-*Gideon* cases (and a treatise) suggesting that the common-law competency standard asked whether the defendant could actually carry out his defense. *See Godinez*, 509 U.S. at 406-07 (Kennedy, J., concurring) (citing *Hunt v. State*, 27 So.2d 186, 191 (Ala. 1946) ("The broad question to be

determined then is whether the defendant is capable of understanding the proceedings *and of making his defense*, and whether he may have a full, fair and impartial trial.") (internal citations omitted) (emphasis added); *Freeman v. People*, 4 Denio 2, 24-25 (N.Y. 1847) ("If . . . a person arraigned for a crime, is capable of understanding the nature and object of the proceedings going on against him; if he rightly comprehends his own condition in reference to such proceedings, *and can conduct his defence in a rational manner*, he is, for the purpose of being tried, to be deemed sane."). Accordingly, the State's proposed standard arises from the same tradition that justified the right of self-representation in the first place.

Apart from this historical link, the proposed coherent-communication rule fits with the context in which it would be used. The question of competency naturally entails the question, "competency to do what?" *See* APA Br. 17-33; *cf. Panetti v. Quarterman*, __ U.S. __, 127 S. Ct. 2842 (2007); *Medina v. California*, 505 U.S. 437, 448 (1992). In *Dusky*, the Court asked the question in the context where making a defense meant making critical decisions and consulting with counsel. *See Dusky v. United States*, 362 U.S. 402, 402 (1960). In *Godinez*, the Court abjured a higher due-process standard for waiving counsel because making that choice required nothing more than the mental ability *Dusky* already ensured. *See Godinez*, 509 U.S. at 399. However, if the State may go beyond the due-process minimum and employ a heightened standard of competency for self-representation, it must also be permitted to calibrate that standard based on the actual demands

of exercising the right—as the common-law authorities themselves contemplated.

In this regard, it is important to note that, notwithstanding the premise that the *Dusky* standard is a proxy for pure mental capacity, the Court itself recognizes that *Dusky* is significant in part because it provides assurance that a defendant will have some functional ability to confer with counsel—an act necessary to vindicate any number of other rights. *See, e.g., Cooper v. Oklahoma*, 517 U.S. 348, 364 (1996) ("For the defendant, the consequences of an erroneous determination of competence are dire. Because he lacks the ability to communicate effectively with counsel, he may be unable to exercise other 'rights deemed essential to a fair trial.'"). The State merely seeks the flexibility to create a standard ensuring the same type of minimally functional competency for *pro se* trials.

4. Edwards suggests that, rather than denying self-representation, trial courts confronted with incoherent defendants should merely impose standby counsel as a supposedly more narrowly tailored alternative. Edwards Br. 47. Standby counsel would hardly be workable in a situation such as this. Among other problems, as the United States has observed, the intervention of standby counsel may well cause an incoherent shift in defense strategy mid-trial. U.S. Br. 22. Indeed, given the obvious inconsistencies between Edwards's preferred self-defense theory and his counsel's lack-of-intent theory, J.A. 525a, this might have been a serious problem in this case had Edwards's counsel initially been relegated to a standby role, only to intervene as the trial progressed.

More fundamentally, even as understood in *McKaskle*, court-imposed standby counsel can play only a limited role if the defendant's right of self-representation is to remain intact. *See McKaskle v. Wiggins*, 465 U.S. 168, 174 (1984). That is, the *pro se* defendant must still be permitted to control the organization and content of the defense, make motions, argue points of law, participate in voir dire, question witnesses, and address the court and jury at appropriate points in the trial. *See id.* Indeed, a trial court that allows too much substantive involvement by standby counsel—particularly in the jury's presence—commits reversible error. *See id.* at 177 n.8, 181. As the Court stated in *McKaskle*, "the objectives underlying the right to proceed *pro se* may be undermined by unsolicited and excessively intrusive participation by standby counsel." *Id.* at 177.

All of the functions that a *pro se* defendant must be permitted to perform on his own require some minimal ability to communicate with the court and jury. Edwards's inability to maintain focus and communicate coherently would likely have rendered him unable to perform any of these functions in a comprehensible manner. *See* U.S. Br. 22-23. Therefore, appointment of standby counsel would not have improved the situation in this case, much less would it have been able "to assure that trial proceedings are fair and orderly and that verdicts are accurate" given Edwards's problems with focus and incoherence. Edwards Br. 46. Standby counsel could have achieved that goal only by taking such an active and substantive role in the defense that the very right of self-representation that Edwards seeks to preserve would have been defeated.

III. The Evidence is Overwhelming that Edwards Could Not Communicate Coherently

A. Edwards demonstrated his incoherence throughout the proceedings

Edwards suffered severe communication deficiencies that existed both before and after he was declared competent to stand trial. According to the doctors who examined him, Edwards's communication problems existed somewhat independently from his schizophrenia and delusions, which were the psychoses that rendered him incompetent for trial. In light of Edwards's precarious baseline competence for trial, the physicians' independent diagnoses of Edwards's expressive language disorder, and the trial court's extensive opportunities to evaluate Edwards in court, evidence of Edwards's communication difficulties prior to treatment was surely relevant to the judge's evaluation of whether Edwards could communicate coherently with the jury.

1. From the first evaluation, Dr. Schuster diagnosed Edwards separately with delusions and with expressive language disorders. J.A. 26a. This latter disability was exhibited "by his patterns of using erroneous and inappropriate sentences both verbally and in writing, but more marked in writing." J.A. 26a. Dr. Masbaum initially found an inability to communicate, but not delusions. J.A. 356a. "He would answer my initial questions that I would ask him. And then I follow up with questions of clarification. He would then ramble and avoid

answering the questions." J.A. 356a. Dr. Trexler similarly made a separate finding that Edwards decompensated during the course of conversations. J.A. 37a. In his testimony, he explained that, apart from Edwards's schizophrenia and delusions, testing showed Edwards to have a "severely impaired" "working memory," which causes problems with mental focus and thought regulation. J.A. 359a-60a.

After Edwards was treated for schizophrenia, Dr. Robert Sena pronounced Edwards competent to stand trial because the schizophrenia and delusions had abated. J.A. 234a-35a. With those particular disorders under control, Edwards had the capacity to understand the factual basis for the charges against him and to assist counsel with the defense. J.A. 234a-35a. It is also true that Dr. Sena found that Edwards's "thought processes are no longer disorganized" and that he could indeed communicate coherently. J.A. 231a. Significantly, however, Dr. Sena made those comments in the narrow context of evaluating how Edwards might communicate with counsel, not how Edwards might fare over an extended period in an unstructured setting. J.A. 228a-29a.

It was not long before Edwards demonstrated once again that he could not communicate coherently. A few months after his return from treatment, Edwards wrote two letters to the trial judge inquiring into the status of pending motions. J.A. 241a-42a. The first letter briefly stated, "For days I have remained alert for the honor to be released for the execution of a right a 2001 discharge claim drew. Thank you for the moment." J.A. 241a. The second letter included a statement saying,

"predict my future disgraced by the court to motion young Americans to gather against crime." J.A. 242a. Subsequent writings provide numerous additional examples of incoherent communication following treatment. State's Br. 15-17, 45-46.

Edwards's writings around the time of the trials—11 and 17 months following Dr. Sena's report, respectively—are particularly relevant. They show that Edwards's thought processes, or at least his attempts to communicate those thoughts, became especially disorganized when Edwards attempted to present compound statements and arguments. J.A. 246a-51a, 258a-62a, 268a-78a, 283a, 300a-04a, 452a-53a. For example, Edwards attempted to explain his motivation for proceeding *pro se*:

> Petitioner has debated forthright, in fiery only one task, of the goal driven work movements with over, 33 strokes, communications needed for coordinating trial, as petitioners defence is not seen eye to eye particularly by equaled attorney not prominent to international law sustenance to this cause.

J.A. 301a.

Edwards's inability to convey his thoughts in writing underscore his general inability to impart cogent thoughts. J.A. 527a (trial court observing that "[s]everal of the reports refer to rambling writings as an indication of an inability to stay focused"). Furthermore, in representing himself at trial Edwards may well have needed to engage in written communication with the court, even if only

to proffer jury instructions. He certainly engaged in voluminous written advocacy prior to trial.

2. Edwards's oral statements to the Court following the Sena report also show disorganized thought processes, an impairment repeatedly observed during the prior forensic interviews. J.A. 20a, 37a, 219a, 351a-60a, 388a-90a, 415a-16a. During the June 27, 2005, hearing regarding his first request to proceed *pro se*, Edwards had profound difficulty expressing the nature of his dissatisfaction with his attorney:

> **MR. CUSHING:** Your Honor, I spoke with my client and my client wishes to address the court with regard to proceeding pro se.
>
> **THE COURT:** Is that what you were trying to interrupt about?
>
> **MR. EDWARDS:** Yes sir, yes sir. I just, I wanted to get it off, get it off of on the record, actually.
>
> **THE COURT:** Make your record.
>
> **MR. EDWARDS:** Your Honor, I actually do have a statement. Your Honor, the, determining the value of the property of the discovery that I received, a general judgment has come across for me to make and it's actually needing to be made upon the court, the court needs to make the decision. The specific findings and the control of the discovery is, is able for me to handle but there's an exception, it's a noble one and it applies to the review of

the information and however it may seem, it is a standard to me. It's real important because it deals with my life, Your Honor, and it, it seems as if for the past six years preparing for this case, attorneys have isolated me from the material or from the discovery and it troubles me to think that I won't make a good case or I won't have a good trial of this. Your Honor, basically it's, it's, either you can give me a, another attorney or I'll have to go pro se with this because I'm, I'm believing that the changes that need to be made with the case are going to cause for me to suffer with the lawyer, Dirk Cushing.

THE COURT: What is he not doing?

MR. EDWARDS: Well, we, we've only had strict tests with the discovery for about 40 minutes. Now, that's, that's –

THE COURT: What do you mean by strict tests?

MR. EDWARDS: Well, the tests to, to review the, the, some of the laws, memorandum (sic) warnings, some of the evidence, some, the difference forms of evidence, the, the contradicting statements, the cross examinations, the affidavits, some of the, the –

J.A. 508a-09a.

Edwards contends these statements, or at least selected portions of them, are "lucid," Edwards Br. 52, but the only thing clear is that the trial court

would have had no idea what Edwards was talking about had Edwards's counsel not introduced the statement as being on the subject of proceeding *pro se*. Nor would a jury listening to Edwards in real time, rather than reviewing a cold transcript, have understood whatever point Edwards was trying to make. To be sure, Edwards does manage to incant the words "*pro se*" late in his speech, but this at most demonstrates that Edwards was able to weave brief coherent statements with lengthier incoherent ones. It does not overcome the overwhelming evidence that Edwards was incapable of sustained coherent communication.

Thus, while Dr. Sena's report indicates that Edwards's treatment for schizophrenia lessened his oral-communication difficulties, these problems in fact persisted, or at least recurred in very short order.

3. Edwards complains that the State's coherent-communication test omits any requirement for expert testimony. Edwards Br. 51. The trial judge in this case, however, actually did rely on expert reports concerning Edwards's neurological examinations, including Dr. Sena's conclusions that Edwards still suffered from schizophrenia and "that Mr. Edwards acknowledged his need for counsel[.]" J.A. 527a. Another expert opinion validating the trial court's judgment as to Edwards's capacity for coherent communication was unnecessary. The Court has never said that expert testimony is critical for making a competency determination under *Dusky*. Trial judges may easily, through simple observations, evaluate whether a defendant has a baseline ability to communicate in a coherent way

with the jury or the court itself. Where, as here, the evidence amply demonstrates a defendant's inability to communicate with the jury in a reliably coherent way, expert testimony is not necessary to validate the obvious.

B. The trial court in effect employed the coherent-communication rule

The trial court's denial of self-representation can only be understood as employing essentially the test the State now formally proposes. The court found that each medical report indicated delusions or schizophrenia and "[s]everal of the reports [also] refer to rambling writings as an indication of an inability to stay focused." J.A. 527a. It concluded, "I think [self-representation] requires abilities that exclude the doctors' findings, if you will." J.A. 527a. Based on these observations, the trial judge stated, "I'm going to carve out a third exception [to *Faretta*] and if I'm wrong . . . and there's a conviction, we'll just try this case again." J.A. 527a.

The import of the judge's finding is that Edwards has mental problems that do not preclude him from meeting the minimal *Dusky* standard, but that disable him from presenting a defense on his own. The court relied on the doctors' reports documenting Edwards's continuing disorganized thought process and "the voluminous writings shared with the Court by [Edwards]" that "key[] into what some of the doctors were saying[.]" J.A. 526a-27a, 529a-30a. Accordingly, there can be little doubt that, had it expressly invoked the standard the State advocates here as a formal legal test, the trial court would have

reached the same conclusion and made substantially the same factual findings that it did. The evidence before the trial court amply justified the decision requiring Edwards to have counsel on the grounds that Edwards could not communicate with the court or jury in a reliably coherent way.

IV. Alternatively, *Faretta* Should Be Overruled

1. Supreme Court Rule 14.1(a) says that "[t]he statement of any question presented is deemed to comprise every subsidiary question fairly included therein." The issue whether *Faretta* should be overruled is fairly presented by the question presented in this case.

The question presented here—which the Court formulated itself—is whether States may adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial. *Faretta*'s continued validity is "fairly included" in that question because one reason that the answer might be "yes" is that *Faretta* should be overruled. That is, if criminal defendants have no Sixth Amendment right to self-representation, then certainly States may adopt a higher standard for determining when defendants may represent themselves. *Cf. Rumsfeld v. Forum for Academic & Inst. Rights, Inc.*, 547 U.S. 47, 56 (2006) ("[T]here can be little doubt that granting certiorari to determine whether a statute is constitutional fairly includes the question of what that statute says.").

Furthermore, this is not a case like *Alabama v. Shelton*, 535 U.S. 654, 660 n.3 (2002), where the invitation to overrule two cases did not arise until the respondent's brief. The harm there was that, because the respondent did not speak up at the certiorari stage, the petitioner had only its reply brief to respond to the argument—and amici supporting the petitioner were precluded from addressing the *stare decisis* issues altogether. *See Shelton*, 535 U.S. at 660 n.3. That problem is not present here, where the State urged in the very first merits-stage brief that the question presented may be answered affirmatively by overruling precedent.

Furthermore, as of the Court's decision in *Martinez*, several Justices were openly questioning the continued vitality of *Faretta*. *See* Robert E. Toone, *The Incoherence of Defendant Autonomy*, 83 N.C. L. Rev. 621, 665 (March 2005) (calling it "encouraging that a majority of the current justices appear ready to overturn *Faretta*"). Consequently, it can hardly come as a surprise that a case presenting a question about the right of self-representation might be an occasion to reconsider whether such a right even exists. *Cf. Procunier v. Navarette*, 434 U.S. 555, 559 n.6 (1978) ("[O]ur power to decide is not limited by the precise terms of the question presented.").

If the Court concludes that, as it stands, *Faretta* requires answering the question presented in the negative, its analysis will not be complete unless it also answers the question that implicitly remains—whether *Faretta* ought to be overruled.

2. Edwards argues that there is no reason to overturn *Faretta* because there is no new historical evidence demonstrating that the right of self-representation does not exist. Edwards Br. 56-57. The reasons for overturning *Faretta*, however, have nothing to do with finding new historical evidence and everything to do with drawing the proper lessons from the evidence already on the record. State's Br. 51-53. *See Faretta*, 422 U.S. at 843-45 (Burger, C.J., dissenting); *id.* at 846 (Blackmun, J., dissenting); *see also* John F. Decker, *The Sixth Amendment Right to Shoot Oneself in the Foot: An Assessment of the Guarantee of Self-Representation Twenty Years After* Faretta, 6 Seton Hall Const. L.J. 483, 596 (1996).

In addition, *Faretta* has indeed not "been gathering dust" since it was decided. Edwards Br. 57. Instead, it has drawn substantial criticism and questions not only from commentators but also from several Justices. *See Martinez v. Court of Appeal*, 528 U.S. 152, 156-57 (2000); *id.* at 164 (Kennedy, J., concurring) (explaining that the majority opinion "cast[s] doubt upon the rationale of *Faretta*"); *id.* (Breyer, J., concurring) (expressing sympathy for trial judges confronted with the issue of self-representation when it "conflicts squarely and inherently with the right to a fair trial"); *Godinez v. Moran*, 509 U.S. 389, 416-17 (1993) (Blackmun, J., dissenting) (criticizing *Faretta* because it "contravenes fundamental principles of fairness" to try without counsel a defendant who is "utterly incapable of conducting his own defense").

Accordingly, there are ample bases for questioning whether *Faretta* was correctly decided.

3. Finally, far from building on *Faretta*, the development of Sixth Amendment doctrine over the past 30 years only undermines it. First, Edwards fails to identify any other Sixth Amendment doctrines founded on the holding of *Faretta*. Edwards Br. 57. The Court cited *Faretta* in *United States v. Vonn*, 535 U.S. 55, 73 n.10 (2002)—where the defendant was represented by counsel—only in a passing reference to the implications of *Faretta* for an uncounseled defendant who pleads guilty. It cited *Faretta* in *Gannett Co. v. DePasquale*, 443 U.S. 368, 382 n.10 (1979), only to explain (again in passing) how *Faretta* was not contrary to *Singer v. United States*, 380 U.S. 24, 34-35 (1965). And the Court's recognition of the Sixth Amendment right to testify, which the Court in *Rock v. Arkansas*, 483 U.S. 44, 52 (1987), said is "more fundamental to a personal defense than the right of self-representation," preceded *Faretta*, so the Court cannot be said to have used *Faretta* in building this doctrine. *See Faretta*, 422 U.S. at 819 n.15 (citing *Brooks v. Tennessee*, 406 U.S. 605, 612 (1972); *Harris v. New York*, 401 U.S. 222, 225 (1971); *Ferguson v. Georgia*, 365 U.S. 570 (1961)).

Second, the growth of right-to-counsel doctrine since *Faretta* has destabilized the basis of the right to self-representation. In particular, the advent, in *Strickland v. Washington*, 466 U.S. 668 (1984), of a just-results effective-assistance-of-counsel standard has eaten away *Faretta*'s defendant-autonomy rationale. State's Br. 58-61. In fact, *Strickland*'s guarantee that criminal defendants will be represented by counsel who demonstrate some minimum level of competency at trial substantially undermines any concern that self-representation is

necessary to avoid utterly inept counsel. State's Br. 41; 58-61.

Edwards counters that, even though the Court did not recognize a right to minimally skilled counsel until well after *Faretta*, the development of that right was well underway when *Faretta* was decided, and the right to minimally effective assistance of the type required by *Strickland* was in fact already the norm. Edwards Br. 58-59. Anthony Faretta, however, demanded self-representation precisely because court-appointed counsel in California was held to a meaningless standard of performance. *See Faretta*, Brief for Petitioner at 23-24, *available* at 1974 WL 174861. Hence, a prevailing formalistic standard for effective assistance of trial counsel was squarely before the Court as a rationale for finding a right of self-representation. *Strickland* negates that rationale, and the Court's premise that the Sixth Amendment is about achieving "just results," *Strickland*, 466 U.S. at 685, is fundamentally at odds with a Sixth Amendment right that supposedly vindicates abstract concerns for defendant "autonomy" rather than substantial justice.

CONCLUSION

The decision below should be reversed.

Respectfully submitted,

STEVE CARTER
Attorney General
THOMAS M. FISHER*
Solicitor General
JULIE A. BRUBAKER
JUSTIN F. ROEBEL
HEATHER L. HAGAN
Deputy Attorneys General

Office of the Indiana
Attorney General
IGC South, Fifth Floor
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-6201

**Counsel of Record*

Counsel for Petitioner

Dated: March 17, 2008

AMICUS CURIAE BRIEF

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39pp (10)

No. 07-208

In the Supreme Court of the United States

STATE OF INDIANA, PETITIONER

v.

AHMAD EDWARDS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

PAUL D. CLEMENT
Solicitor General
Counsel of Record
ALICE S. FISHER
Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
WILLIAM M. JAY
Assistant to the Solicitor General
ELIZABETH D. COLLERY
Attorney
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTION PRESENTED

May States adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?

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In the Supreme Court of the United States

No. 07-208

STATE OF INDIANA, PETITIONER

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE UNITED STATES

Defendants in federal criminal prosecutions may invoke the right to self-representation pursuant to 28 U.S.C. 1654 and *Faretta* v. *California*, 422 U.S. 806 (1975). A substantial portion of the defendants invoking that right may be mentally ill. If federal district courts require such defendants to proceed through counsel rather than pro se, these defendants may later attack their convictions on the ground that they were improperly denied self-representation. If federal courts permit self-representation, the resulting trial may raise serious questions of fairness and the appearance of fairness. The United States accordingly has a substantial interest in the question whether the Constitution permits limitations on the opportunity of a mentally ill defendant, who

meets minimal competence tests, to proceed to trial pro se.

STATEMENT

1. On July 12, 1999, respondent stole a pair of shoes from an Indianapolis department store. Pet. App. 2a, 17a-18a. When an unarmed loss-prevention officer grabbed him outside the store, respondent drew a handgun and fired three shots. The officer was grazed, and a bystander was shot in the leg. *Id.* at 2a, 18a. An FBI agent who happened by chased respondent into a parking garage and apprehended him by shooting him in the thigh after he repeatedly refused to drop his gun. *Id.* at 2a. The State charged respondent with attempted murder, battery with a deadly weapon, criminal recklessness, and theft. *Id.* at 19a.

2. Respondent indisputably suffers from mental illness, and he also may have brain damage as a result of a car accident. J.A. 48a-49a, 113a-114a, 206a-211a. For five and a half years before trial, respondent underwent numerous competency evaluations, the trial court held three separate competency hearings, and respondent was repeatedly committed to the state hospital.

a. In December 1999, respondent's counsel moved for a competency evaluation, which the trial court granted. J.A. 13a-14a. Drs. Ned Masbaum and Dwight Schuster, the two neuropsychiatrists appointed by the trial court to examine respondent, concluded that he was competent to stand trial, although he suffered from "delusional disorder grandiose type." J.A. 21a, 26a-27a. Dr. Lance Trexler, a neuropsychologist retained by the defense, reached the opposite conclusion. He found that respondent had not only a delusional disorder, but also compromised brain functions, consistent with frontal-

lobe injuries; a tendency to "decompensate" in the course of a conversation; and possibly a major thought disorder, such as schizophrenia. J.A. 37a-38a. Dr. Trexler opined that these problems would cause respondent "considerable difficulty participating in his legal defense." J.A. 37a.

In August 2000, following a competency hearing at which the experts testified, J.A. 347a-365a, the trial judge found respondent incompetent to stand trial. J.A. 48a-49a, 365a. The court committed him to Logansport State Hospital for treatment and, if possible, restoration to competency. J.A. 48a-49a.

In March 2001, a psychiatrist at the state hospital found respondent to be "psychiatrically normal" and "free of psychosis, depression, mania, and confusion." J.A. 61a, 63a-64a. Respondent was returned to jail to stand trial.

b. Respondent's counsel again questioned his competency, and the trial court ordered further testing and a second competency hearing. J.A. 110a. Drs. Masbaum and Schuster once again concluded that respondent was competent. J.A. 84a-88a, 107a-108a, 110a-112a, 385a-395a. Dr. Trexler again disagreed. He testified that respondent had trouble "differentiating reality from non-reality," became incoherent after a few seconds, and was probably schizophrenic. J.A. 413a-414a, 415a, 419a. In his opinion, it was "very clear * * * that [respondent was] not able to effectively assist his counsel." J.A. 424a. Dr. Trexler also opined that medication would improve respondent's chances of collaborating with counsel. J.A. 425a. On April 16, 2002, the trial court concluded that although respondent "suffer[ed] from mental illness," he was "competent to assist his attorneys in his defense and stand trial." J.A. 114a.

c. In November 2002, just before the trial date, defense counsel requested that respondent be examined by a new psychiatrist. J.A. 166a-168a. Dr. Philip Coons was appointed and, after examining respondent, concluded that he was schizophrenic based on his "grandiose delusional system" and his "marked thought disturbances." J.A. 164a. Dr. Coons found that respondent could understand the charges, but that "[h]is delusions and his marked difficulties in thinking make it impossible for him to cooperate with his attorney." *Ibid.* The trial court convened a third competency hearing, J.A. 464a-506a, and on November 24, 2003, ordered that respondent be returned to the state hospital, J.A. 206a-211a.

d. During his second hospitalization, respondent received a "full program" of treatment for schizophrenia and depression. J.A. 216a. The treatment was initially unsuccessful: after three months, the hospital concluded that he was still incompetent to stand trial, but might become competent in the future. J.A. 213a, 224a.

Two months later, however, the hospital reported that although respondent was still schizophrenic, he had attained competence. J.A. 230a-231a. In applying the criteria, the hospital noted that respondent "acknowledges his need for counsel," and it specifically qualified its finding on respondent's ability to plan a legal strategy by noting that respondent could formulate such a plan "in cooperation with his attorney." J.A. 232a, 233a (uppercase omitted). Respondent was remanded to custody for trial.

3. On the day trial was to commence, respondent requested to proceed pro se. J.A. 509a. After a colloquy with respondent, the trial court deemed his waiver of counsel "knowing," but stated that respondent had "ab-

solutely no concept of what has to be done to present a defense or to defend himself against the charges brought." J.A. 516a. The court "reserv[ed]" judgment on whether respondent's waiver was "intelligent," however, because respondent stated that he required a continuance in order to proceed pro se, and the trial court denied the continuance. J.A. 517a, 519a-520a.

Respondent was represented by counsel at trial. The jury found respondent guilty of theft and criminal recklessness, but could not reach a verdict on the other two charges.

4. Shortly before his retrial before the same trial judge, respondent again petitioned to proceed pro se. J.A. 279a-282a. At a hearing on the first day of trial, the trial court denied the request. J.A. 522a, 527a. The court concluded, based on the extensive medical evidence and respondent's own "voluminous" pro se filings, that while respondent was competent to stand trial, he was not competent to defend himself. J.A. 527a, 529a. The court noted that the state hospital's most recent finding of competence had been "conditioned by the doctors on the assistance of counsel," and respondent's ability to plan a legal strategy likewise depended on the assistance of counsel. J.A. 527a, 530a. The court also noted respondent's extensive history of mental illness, including schizophrenia and delusions; observed that respondent's "rambling writings" were "an indication of an inability to stay focused"; and found that the pro se filings that the court had personally reviewed "key[ed] into what some of the doctors were saying." J.A. 526a-527a, 529a-530a.

Respondent was convicted on the remaining two counts. The trial court sentenced respondent to 30 years of imprisonment. Pet. App. 3a.

5. The Indiana Court of Appeals reversed, holding that this Court's precedent required that respondent be allowed to represent himself at trial. The court recognized that the trial court's conclusion that respondent was not competent to do so was "[s]upport[ed] * * * [by] the reports of the doctors who examined [respondent] and the voluminous pages of pro se correspondence" from respondent. Pet. App. 23a. And the court "appreciat[ed] that [the trial court] was simply trying to ensure that [respondent] received a fair trial." *Id.* at 24a. But the court concluded that "*Faretta* and *Godinez* [v. *Moran*, 509 U.S. 389 (1993),] have never been overruled, and the rules announced therein * * * leave little wiggle room." *Ibid.* In its view, these cases established "that one's competency to represent oneself at trial is measured by one's competency to stand trial and that the standard for the former may not be higher than the standard for the latter." *Ibid.* Because respondent was found competent to be tried and had unequivocally asked to proceed pro se at the second trial, the court reversed the convictions obtained at that stage and remanded for retrial. *Ibid.*

6. The Supreme Court of Indiana affirmed. Pet. App. 1a-15a. The court concluded that the "determination by an experienced trial judge that [respondent] was incapable of presenting a defense" was, "at a minimum, reasonable" and had a "substantial basis" in the record. *Id.* at 14a. Nonetheless, the court held that "*Faretta* and *Godinez* bind[] us" to the rule "that competency to represent oneself at trial is measured by competency to stand trial." *Id.* at 13a-14a. As had the court of appeals, the supreme court expressed "sympathy for the view that a trial [court] should be afforded [some] discretion to make that call," and suggested that this case would

give the Supreme Court "an opportunity to revisit" *Faretta* and *Godinez*. *Id.* at 14a. But because respondent was found competent to stand trial, the court concluded that "it was reversible error to deny him [the right to proceed pro se] on the ground that he was incapable of presenting his defense." *Ibid.*

SUMMARY OF ARGUMENT

The state supreme court held that, if a defendant is competent to stand trial and knowingly, intelligently, and voluntarily requests to proceed to trial pro se, a trial court is powerless to reject the request even if the defendant is mentally ill and incapable of presenting a defense without assistance. The Constitution does not compel that result. "[T]he right to self-representation is not absolute. * * * [T]he government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." *Martinez* v. *Court of Appeal*, 528 U.S. 152, 161-162 (2000). Under the correct approach, a mentally ill defendant who is competent to stand trial may be denied the right to proceed pro se, if the trial court determines through an appropriately particularized analysis that his conduct of the trial would frustrate important governmental interests.

Most notably, the government has a compelling interest in ensuring that the process of criminal adjudication is not only fair, but seen and believed to be fair. This Court has held that this interest justifies reasonable prophylactic restrictions on defendants' exercise of procedural rights. See *Wheat* v. *United States*, 486 U.S. 153, 160, 162-163 (1988). The condition of some mentally ill defendants may severely and irremediably affect their ability to perform basic skills necessary for self-

representation—*e.g.*, to communicate, to absorb and comprehend the State's evidence, and to formulate questions and affirmative theories of the case. Their behavior may also be delusional or nonsensical. When such defendants act pro se, the trial may verge on a farce. When an individual is competent to stand trial, but not sufficiently competent to mount a serious defense without assistance, the government should not face a choice of either declining to prosecute a competent defendant or unleashing a spectacle that may risk fundamental unfairness and serious damage to public confidence in the fairness of the trial process.

These important governmental interests may, in appropriate circumstances, justify precluding a mentally ill defendant from self-representation at trial. This Court's decision in *Godinez* v. *Moran*, 509 U.S. 389 (1993), is not to the contrary. *Godinez* establishes that nothing in the Due Process Clause *invalidates* a defendant's knowing, intelligent, and voluntary waiver of the right to counsel if the defendant is competent to stand trial. But nothing in the Due Process Clause, or in *Godinez*, compels acceptance of such a waiver by the trial court. Indeed, *Godinez* established that a defendant meeting these standards is competent to plead guilty, yet he clearly has no constitutional *right* to plead guilty. Accordingly, a further competency requirement for self-representation is valid if it reasonably furthers an important governmental interest that, in the individual case, "outweighs the defendant's interest in acting as his own lawyer." *Martinez*, 528 U.S. at 162.

The trial court's findings in this case meet that standard. The court reasonably relied on medical evidence that respondent was competent to stand trial, but only with the assistance of counsel. The psychiatric evidence

and the trial judge's own experience with respondent's efforts at oral and written communication gave the court a firm basis to conclude that respondent lacked the basic competencies necessary to act as his own lawyer. That finding validly furthered the important state interest in the integrity of respondent's criminal adjudication.

The trial court's approach is not the only permissible one. With the assistance of psychological and psychiatric evidence, States may balance these competing interests in different ways. The Constitution, however, does not convert the competency floor announced in *Godinez* into a ceiling on the State's power to regulate pro se representation. Rather, although States *may* equate competency to stand trial and competency to self-represent, States (and the federal government) should remain free to respond to individuals whose limitations make the need for assistance by counsel particularly acute. The Constitution properly leaves the elaboration of the appropriate standards to each jurisdiction, subject to this Court's review. Cf. *Medina* v. *California*, 505 U.S. 437, 445-446 (1992).

ARGUMENT

I. MENTALLY ILL DEFENDANTS MAY LEGITIMATELY BE RESTRICTED FROM SELF-REPRESENTATION AT TRIAL

Since its initial holding that a criminal defendant has a right of self-representation, this Court has consistently acknowledged that the right, like other constitutionally protected trial rights, is not absolute. To the contrary, as the Court has regularly recognized, trial courts must have latitude to impose reasonable limitations on that practice. Restricting defendants with severe mental illness from proceeding to trial pro se, when

that self-representation would jeopardize important governmental interests, is entirely consistent with this Court's analysis of the right of self-representation.

A. The Substantial Governmental Interest In The Fairness Of Criminal Proceedings May, In Appropriate Circumstances, Outweigh A Defendant's Request To Proceed Pro Se

1. In *Faretta* v. *California*, 422 U.S. 806 (1975), this Court held that the Sixth Amendment guarantees a criminal defendant the right to refuse the assistance of counsel and represent himself at trial. Relying on history, structural inference, and principles of individual autonomy, *id.* at 818-834, the Court concluded that a defendant could choose to manage his own defense as long as he was first "made aware of the dangers and disadvantages of self-representation," and "'knowingly and intelligently' [chose to] forgo [counsel]." *Id.* at 835.

Faretta and subsequent cases made clear, however, that "the right to self-representation is not absolute." *Martinez* v. *Court of Appeal*, 528 U.S. 152, 161 (2000). In particular, the right established in *Faretta* "is not a license to abuse the dignity of the courtroom" or "a license not to comply with relevant rules of procedural and substantive law." *Faretta*, 422 U.S. at 835 n.46. Accordingly, "the trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct." *Id.* at 834 n.46 (citing *Illinois* v. *Allen*, 397 U.S. 337 (1970)); see *United States* v. *West*, 877 F.2d 281, 287 (4th Cir.) (affirming termination of self-representation), cert. denied, 493 U.S. 869, 493 U.S. 959 (1989), and 493 U.S. 1070 (1990); cf. *United States* v. *Mack*, 362 F.3d 597, 601 (9th Cir. 2004) (termination of self-representation was justified,

but nonetheless impermissible because no standby counsel was available to continue the trial).

Similarly, *Faretta* noted that the trial court may appoint standby counsel for the defendant, "even over objection." 422 U.S. at 835 n.46. The Court subsequently held that a court may impose standby counsel on an unwilling defendant. *McKaskle* v. *Wiggins*, 465 U.S. 168 (1984). Requiring standby counsel does not violate the Constitution if it remains within "reasonable limits," the Court held, even if it "somewhat undermines the *pro se* defendant's appearance of control over his own defense." *Id.* at 184, 188.

The Court did not purport in *Faretta* to determine categorically which other interests could legitimately justify limitations on self-representation. Significantly, Faretta himself was "literate, competent and understanding." 422 U.S. at 835. Thus, the Court's decision did not address whether the right of self-representation may be limited if the defendant, although competent to stand trial, suffers from a mental illness that significantly impairs the cognitive ability necessary to act as his or her own attorney and threatens to make a mockery of the trial proceedings.

Rather, this Court simply cautioned that a lay defendant may not be barred from representing himself merely because he lacks the "technical legal knowledge" of a trained attorney. *Faretta*, 422 U.S. at 836. The trial court had precluded Faretta from proceeding pro se after questioning him on points of law, such as the exceptions to the hearsay rule and the grounds for objecting to potential jurors. See *id.* at 808 n.3. This Court held that such a legal examination is improper. The Court recognized that "in most criminal prosecutions defendants could better defend with counsel's guidance

than by their own unskilled efforts," although it believed that "in some rare instances, the defendant might in fact present his case more effectively by conducting his own defense." *Id.* at 834; see also *Martinez*, 528 U.S. at 161 ("No one * * * attempts to argue that as a rule *pro se* representation is wise, desirable, or efficient."). Nonetheless, the Court concluded that because "[t]he right to defend is personal" and because "[t]he defendant * * * will bear the personal consequences of a conviction," the likelihood of failure is not a sufficient reason to bar the defendant from choosing to proceed without counsel. *Faretta*, 422 U.S. at 834.

Thus, *Faretta* stated, and the cases applying it confirm, that a valid state interest can overcome the right to self-representation in particular cases. For example, "most courts" have concluded that the governmental interest in the orderly conduct of criminal proceedings justifies denying requests to proceed pro se on the eve of trial. *Martinez*, 528 U.S. at 162 & n.11 (citing John F. Decker, *The Sixth Amendment Right to Shoot Oneself in the Foot: An Assessment of the Guarantee of Self-Representation Twenty Years After* Faretta, 6 Seton Hall Const. L.J. 483, 544-550 (1996)); accord, *e.g.*, *Parton* v. *Wyrick*, 704 F.2d 415, 417 (8th Cir. 1983) (per curiam).

Whether the right to proceed pro se comes from the Sixth Amendment, see *Faretta*, 422 U.S. at 818, or the Due Process Clause, see *Martinez*, 528 U.S. at 165 (Scalia, J., concurring in the judgment), there is nothing incongruous about weighing this particular trial right against legitimate, countervailing governmental interests. This Court has regularly concluded that a defendant's procedural rights may yield in limited circumstances where the contrary interest is sufficiently

strong. See, *e.g.*, *Michigan* v. *Lucas*, 500 U.S. 145, 149-151 (1991) ("legitimate state interests" justified reasonable limitations on the defendant's Sixth Amendment right to present particular evidence); accord *United States* v. *Scheffer*, 523 U.S. 303, 308 (1998) ("A defendant's right to present relevant evidence is not unlimited, but rather * * * may * * * bow to accommodate other legitimate interests in the criminal trial process.") (citations omitted); see also, *e.g.*, *Pennsylvania* v. *Ritchie*, 480 U.S. 39, 60-61 (1987) (right to compulsory process); *Morris* v. *Slappy*, 461 U.S. 1, 11-12 (1983) (right to counsel).

2. The State's interest in ensuring the integrity and fairness of its own criminal proceedings—both real and perceived—is precisely the type of interest that may, in a particular case, justify denying a defendant's request for self-representation. "Even at the trial level, * * * the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." *Martinez*, 528 U.S. at 162; see also *id.* at 163 (concluding that "the overriding state interest in the fair and efficient administration of justice" may justify denying a criminal defendant permission to proceed pro se on appeal).

In a variety of contexts, this Court has repeatedly recognized the legitimacy and importance of the governmental interest in ensuring that trials are fair and are perceived to be fair. In *Sell* v. *United States*, 539 U.S. 166 (2003), for example, the Court held that "the Government has a * * * constitutionally essential interest in assuring that the defendant's trial is a fair one," an interest sufficiently strong that in appropriate circumstances it can justify the forcible administration of anti-

psychotic drugs over the defendant's objection. *Id.* at 180. Similarly, in *Wheat* v. *United States*, 486 U.S. 153 (1988), the Court held that preserving the apparent integrity of judicial proceedings can justify denying a criminal defendant permission to waive his right to conflict-free counsel. When the defendant seeks to be represented by counsel who has a potential conflict of interest (in *Wheat*, an attorney who was already representing a co-defendant with distinct legal interests), the court *may* permit the defendant to waive the conflict, but it may also deny the defendant his counsel of choice. "Federal courts have an independent interest in ensuring that * * * legal proceedings appear fair to all who observe them." *Id.* at 160. This interest in preserving confidence in the justice system may override the defendant's demand that he be permitted to retain his preferred counsel, and trial courts have "substantial latitude" to make this determination even before any actual conflict arises. *Id.* at 163; cf. *Offutt* v. *United States*, 348 U.S. 11, 14 (1954) ("[J]ustice must satisfy the appearance of justice.").

B. The Important Interest In Preserving The Integrity And Fairness Of Criminal Proceedings Justifies Reasonable Limitations On Self-Representation At Trial By Mentally Ill Defendants

Mental illness poses unique challenges to the pro se litigant, to prosecuting authorities, and to trial courts. Lengthy experience with mentally ill pro se litigants confirms that self-representation under these circumstances can undermine public confidence in the fairness and impartiality of criminal trials. Indeed, this problem contributes to the "dismay about the practical consequences of [the *Faretta*] holding" expressed by "judges

close[] to the firing line." *Martinez*, 528 U.S. at 164 (Breyer, J., concurring).

1. Since *Faretta*, state and federal courts have had considerable exposure to pro se representation by mentally ill defendants. One recent analysis of federal district court docket sheets estimated that over 20% of pro se federal defendants exhibited signs of mental illness sufficient to cause the court to order a competency examination—in some cases, even before the defendant demanded to proceed pro se. Erica J. Hashimoto, *Defending the Right of Self-Representation: An Empirical Look at the Pro Se Felony Defendant*, 85 N.C. L. Rev. 423, 456 (2007). A smaller-scale but more intensive study of defendants referred for initial psychiatric assessments found that the pro se defendants' "desires to represent themselves were *clearly related to their psychoses*." Robert D. Miller & Leonard V. Kaplan, *Representation by Counsel: Right or Obligation?*, 10 Behav. Sci. & L. 395, 404 (1992) (emphasis added). Indeed, all 11 of the referred defendants who wanted to represent themselves "were suffering from [major] psychiatric disorders which raised major concerns about their competency." *Ibid.*; see also Douglas Mossman & Neal W. Dunseith, Jr., *"A Fool for a Client": Print Portrayals of 49* Pro Se *Criminal Defendants*, 29 J. Am. Acad. Psychiatry & L. 408, 412 (2001) (based on media coverage, 13 of 49 pro se defendants exhibited "statements or actions [that] appeared to be symptoms of a serious Axis I mental disorder or indicated possible incompetence to stand trial").

Many of these mentally ill defendants are competent to stand trial with the assistance of counsel. A criminal defendant may constitutionally be brought to trial if he has both "sufficient present ability to consult with his

lawyer with a reasonable degree of rational understanding" and "a rational as well as factual understanding of the proceedings against him." *Dusky* v. *United States*, 362 U.S. 402, 402 (1960) (per curiam); see also *Drope* v. *Missouri*, 420 U.S. 162, 171 (1975) (competency requires capacity "to consult with counsel, and to assist in preparing his defense").

Individuals who are competent to stand trial under the *Dusky* standard, however, may nonetheless suffer from significant mental illnesses that directly and materially impair their ability to proceed pro se. See, *e.g.*, *State* v. *Marquardt*, 705 N.W.2d 878, 892-893 (Wis. 2005) (upholding denial of self-representation based on expert testimony that the defendant's "delusional symptom" prevented him from "appreciat[ing] the evidence" or "plan[ning] a defense strategy that is realistic") (citation omitted), cert. denied, 127 S. Ct. 495 (2006); see also Douglas Mossman et al., *AAPL Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial*, 35 J. Am. Acad. Psychiatry & L. S3, S44 (Supp. 2007) (citing studies showing that significant percentages of defendants with schizophrenia, other psychotic illnesses, affective disorders, or mental retardation are found competent to stand trial); Jason Marks, *Toward a Separate Standard of Mental Competence for Self-Representation by the Criminal Defendant*, 13 Crim. Just. J. 39, 39-40 & n.1, 48-49 & n.40 (1991-1992) (citing examples of pro se defendants whose paranoia, delusions, hallucinations, incoherence, or "nearly complete inability to organize [their] thinking and gather information" affected their pro se defense). The *Dusky* standard does not take these impairments into account if the defendant has the requisite understanding and ability to assist counsel.

Some such defendants will not be able to make the additional showing of a "knowing, intelligent, and voluntary" waiver of counsel. See, *e.g.*, *People* v. *Lego*, 660 N.E.2d 971, 979 (Ill. 1995); *United States* v. *Cash*, 47 F.3d 1083, 1089-1090 (11th Cir. 1995). But just as a finding of competency to stand trial does not guarantee an ability to make a valid waiver, the Constitution should not be interpreted to tether the State's views of competency for self-representation to the standard for competency to stand trial. The waiver and competency to stand trial inquiries are different. The ability to make such a waiver turns on the defendant's comprehension of a right and his making an uncoerced choice. *Godinez* v. *Moran*, 509 U.S. 389, 400-401 & n.12 (1993). But neither competency to stand trial nor a valid waiver guarantees that a defendant can perform the tasks of self-representation without turning the courtroom into a theater for absurd behavior that vitiates any coherent defense, any more than a valid waiver guarantees that a defendant will not be disruptive or noncompliant with a court's rules. States should have room to act to prevent both spectacles.[1]

2. Pro se representation by mentally defendants whose performance is seriously affected by their illness may impinge on the State's vital interest in the integrity

[1] Requiring a defendant to proceed through counsel, rather than pro se, still preserves a substantial role for the "individual autonomy" interests supporting *Faretta*. *Martinez*, 528 U.S. at 160. First, the defendant can personally present his case by exercising the right to testify, which is "[e]ven more fundamental to a personal defense than the right of self-representation." *Rock* v. *Arkansas*, 483 U.S. 44, 52 (1987). Second, a represented defendant plays a vital role in trial strategy, because counsel must "consult with the client regarding 'important decisions,' including questions of overarching defense strategy." *Florida* v. *Nixon*, 543 U.S. 175, 187 (2004) (citation omitted).

of its justice system. Pro se representation by the mentally ill can seriously impair the integrity of the judicial process as a search for truth through fair proceedings. While "a measure of unorthodoxy, confusion and delay is likely, perhaps inevitable, in [all] *pro se* cases," *United States* v. *Dougherty*, 473 F.2d 1113, 1124 (D.C. Cir. 1972), self-representation by some mentally ill defendants may cross the line into delusional or incoherent behavior. For example, as petitioner notes, pro se defendant Scott Panetti attempted to subpoena "John F. Kennedy, the Pope, and Jesus," assumed an alternative personality named "Sarge" when testifying, and asked various nonsensical questions. Pet. Br. 30 (citing Pet. Br. at 10-14, *Panetti* v. *Quarterman*, 127 S. Ct. 2842 (2007) (No. 06-6407)); see also *id.* at 32-33 (providing additional examples). Pro se representation by mentally ill defendants who are incapable of proceeding coherently without assistance may damage "the institutional interest in the rendition of just verdicts in criminal cases." *Wheat*, 486 U.S. at 160.

Relatedly, such trials threaten to undermine public trust in the fairness of the justice system. "[T]he integrity of and public confidence in the system are undermined, when an easy conviction is obtained due to the defendant's ill-advised decision to waive counsel." *Faretta*, 422 U.S. at 839 (Burger, C.J., dissenting). This consequence of self-representation is immeasurably magnified when a mentally ill defendant fails to present any coherent defense, effectively forfeits critical procedural safeguards, or antagonizes the witnesses or the jury. See, *e.g.*, Pet. Br. 31-32 (noting that pro se defendant Kashani Farhad "virtually * * * admit[ted] his own guilt during his opening statement," offered testimony and closing argument that were prejudicial to his

case, and failed to object at critical points) (citing *United States* v. *Farshad*, 190 F.3d 1097, 1102-1105 (9th Cir. 1999) (Reinhardt, J., concurring specially)). Criminal convictions after such trials are "deeply disturbing," and inevitably erode the public's perception of the fairness of the judicial system. *Virgin Islands* v. *Charles*, 72 F.3d 401, 413 (3d Cir. 1995) (Lewis, J., concurring) (describing trial at which a "paranoid, delusional" defendant elected to represent himself); see also Michael L. Perlin, *"Dignity Was the First to Leave": Godinez v. Moran, Colin Ferguson, and the Trial of Mentally Disabled Criminal Defendants*, 14 Behav. Sci. & L. 61, 64, 72-74 (1996) (describing public reactions to defendant's bizarre pro se defense); Decker, 6 Seton Hall Const. L.J. at 523 (same).

The sheer spectacle of the defendant's presentation may be impossible to divorce in the public mind from the guilty verdict. Observers of jury trials know that "[a]t all stages of the proceedings, the defendant's behavior, manner, facial expressions, and emotional responses, or their absence, combine to make an overall impression on the trier of fact, an impression that can have a powerful influence on the outcome of the trial." *Riggins* v. *Nevada*, 504 U.S. 127, 142 (1992) (Kennedy, J., concurring in the judgment). Not only the jury, but the public at large may recoil from a trial marred by a defendant's mental illness that leads him to reject assistance necessary to permit him to mount a meaningful defense. Such an impression can sap public confidence in the accuracy or legitimacy of the verdict.[2]

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[2] Other considerations may independently justify denial of self-representation by particular mentally ill defendants who are competent to stand trial. Some such defendants may decompensate under the stress of personally conducting the trial, possibly losing their compe-

These recurring, foreseeable consequences of self-representation at trial by some mentally ill defendants significantly impinge on important governmental interests. Accordingly, although the Constitution does not require it, the State may reasonably conclude that "there is a point of incompetency, short of complete incapacity, where a defendant is able to understand the nature of the charges against him and to assist in the preparation of his defense, yet does not have the capacity to waive counsel and undertake representation of himself." *Dougherty*, 473 F.2d at 1123 n.13.

4. Respondent suggests (Br. in Opp. 31-33) that these governmental interests should be accommodated by means short of denying self-representation before the trial begins. In at least some circumstances, however, the State can conclude that protection of these interests requires that a mentally ill defendant be denied permission to try his case pro se.

a. For example, the court's power to revoke pro se representation when the defendant's conduct disrupts the proceedings, see *Faretta*, 422 U.S. at 834 n.46, does not adequately substitute for a pre-trial determination focused on the capacity for self-representation. First,

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tency to stand trial at all. See, *e.g.*, Pet. Br. at 8, *Panetti*, *supra* (No. 06-6407) (detailing a forensic psychiatrist's testimony that Panetti, a schizophrenic, "decompensates when under stress, causing his thinking to become tangential, circumstantial, and inefficient"); *State* v. *Davis*, 85 P.3d 1164, 1170 (Kan. 2004) (defendant deemed competent but "unlikely [to] be able to maintain his * * * capacity to stand trial through the stress of court proceedings."). Federal and state governments have an "important" and "substantial" interest in bringing competent defendants to trial, *Sell*, 539 U.S. at 180, and in considering whether to permit self-representation, trial courts may legitimately consider the anticipated risk of proceeding pro se to the defendant's own mental state.

the State's legitimate interests are not limited to preventing out-and-out disruptions. The prejudicial impact of the defendant's mental illness on his conduct of a trial may manifest itself in behavior that undermines the proceeding's perceived fairness, without being conventionally disruptive in a way that would justify terminating self-representation. See, *e.g.*, Mossman & Dunseith, 29 J. Am. Acad. Psychiatry & L. at 413 tbl. 5 (collecting reports of unusual behavior by pro se defendants who variously wore a bulletproof vest or a veil to court; "[s]haved hair on his head into a patchwork of tufts"; and snored or sobbed in the courtroom). In fact, the perceived unfairness of trying a mentally ill, pro se defendant often arises from the defendant's *inaction*, or inability to act. See, *e.g.*, Decker, 6 Seton Hall Const. L.J. at 552-554.

Relatedly, because mental illness that undermines effective self-representation takes many forms beyond mere obstreperousness, the "wait and see if the defendant is obstreperous" approach misses the mark. While the competency evaluation can consider the defendant's ability to behave, it can focus on other relevant variables as well. See, *e.g.*, Mossman et al., 35 J. Am. Acad. Psychiatry & L. at S34 ("Areas that the psychiatrist typically assesses during an interview include the defendant's * * * ability to behave properly during court proceedings and at trial.").

Finally, remedies after the trial begins are unlikely to vindicate the government's interests. Removing a defendant from the courtroom for "extreme and aggravated" misconduct is an extraordinary remedy, *Allen*, 397 U.S. at 346, and it may not be justified in any event by merely bizarre behavior. Even when it is, the consequences of using this disciplinary authority for a pro se

defendant are severe. If standby counsel is not available to step in, a mistrial may result.[3] Even if standby counsel has been appointed and is available to take over the defense, the change may produce an incoherent or shifting defense. (This case illustrates that potential: respondent's attorney proceeded at trial on the theory that respondent had not acted with the intent to kill, whereas respondent had intended to argue the very different theory that he shot the loss-prevention officer in self-defense. See J.A. 525a.)

b. Even if the trial court appoints standby counsel, counsel's limited role will rarely be able to prevent the pro se defendant from undermining the perceived fairness of the judicial process. Standby counsel serve primarily to relieve the court of some of the burdens of dealing with a pro se litigant. *McKaskle*, 465 U.S. at 184. But even if the court appoints standby counsel, "the pro se defendant is entitled to preserve actual control over the case he chooses to present to the jury." *Id.* at 178. Indeed, the trial court cannot permit too much involvement by standby counsel—particularly in the jury's presence—without committing reversible error. See *id.* at 177 & n.8, 181. And the defendant is most likely to damage both his own cause and the integrity of the proceedings during the very stages when standby

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[3] In some instances, criminal defendants first assert their desire to represent themselves too close to trial for the appointment of standby counsel to be practicable. See, *e.g.*, *Smith* v. *Doyle*, No. 93-1222, 1993 WL 475399, at *2 (7th Cir. Nov. 17, 1993) (public defender declined to serve as standby counsel on the eve of trial). In others, defendants refuse to accept standby counsel. *Mack*, 362 F.3d at 599. While a court may override a defendant's objections to standby counsel, *McKaskle*, 465 U.S. at 184, it is not required to do so.

counsel is least able to intervene—*e.g.*, opening statements, questioning of witnesses, and closing argument.

Accordingly, standby counsel can ordinarily do little to prevent the mentally ill defendant from engaging in conduct that is delusional, irrational, or self-destructive. The appointment of standby counsel, therefore, does not automatically protect the State's important interest in safeguarding the integrity of the trial.

C. This Court's Decision In *Godinez* Does Not Restrict Courts And Legislatures From Defining Distinct Limits On Competency To Proceed To Trial Pro Se

Respondent relies extensively (Br. in Opp. 18-22) on this Court's decision in *Godinez* v. *Moran*, 509 U.S. 389 (1993), which held that *allowing* a competent defendant to proceed pro se does not violate due process so long as the defendant's waiver of his right to counsel is knowing, voluntary, and intelligent. Respondent misreads *Godinez*: this Court did not hold that the constitutional floor for electing self-representation—competency to stand trial plus an effective waiver—is also the constitutional ceiling on what limitations a State can impose on that election.

1. In *Godinez*, Moran had waived his right to counsel and thereafter pleaded guilty in state court. On habeas corpus review, the Ninth Circuit found a due process violation because the trial court had not established that Moran had acted with a sufficient degree of competence. The Ninth Circuit held that courts *must* find a different, and "higher," standard of competency to waive constitutional rights, including the right to counsel, than simply to stand trial. *Moran* v. *Godinez*, 972 F.2d 263, 268 (9th Cir. 1992), rev'd, 509 U.S. 389 (1993). The Ninth Circuit held that the Constitution permits waiver

of such rights only if the defendant has "the capacity for 'reasoned choice' among the alternatives available to him." *Id.* at 266.

This Court reversed. The Court "reject[ed] the notion that competence to plead guilty or to waive the right to counsel must be measured by a standard that is higher than (or even different from) the *Dusky* standard." 509 U.S. at 398. Once deemed competent, Moran could permissibly waive these (or other) constitutional rights if he could satisfy the trial court that his waiver was "knowing and voluntary." *Id.* at 400.

The Court noted that a defendant who seeks to waive the right to counsel must show "the competence to *waive the right*, not the competence to represent himself." *Godinez*, 509 U.S. at 399. The Court therefore rejected Moran's suggestion that the Constitution requires a trial court to establish that a defendant has adequate "powers of comprehension, judgment, and reason" before allowing that defendant to proceed pro se. *Ibid.* (citations omitted); see Resp. Br. at 26, 32, *Godinez*, *supra* (No. 92-725). The Court did not dispute the accuracy of Moran's argument that successfully litigating a case pro se requires greater ability than is demonstrated by satisfying the *Dusky* standard; rather, the Court held that point irrelevant for purposes of the waiver analysis, because "the *decision* to waive counsel" requires no such "higher level of mental functioning." 509 U.S. at 399 (emphasis added).[4]

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[4] The United States argued in *Godinez* that "nothing in the principles of due process or any of this Court's cases *requires* that trial courts" demand of defendants a higher level of competency before pleading guilty or waiving counsel. U.S. Br. at 24, *Godinez*, *supra* (No. 92-725) (emphasis added); see *id.* at 15-16. Because Moran had pleaded guilty and not contested his sentence, the United States ar-

The Court noted in closing that the constitutional competency standard is simple by design. "[P]sychiatrists and scholars may find it useful to classify the various kinds and degrees of competence," and "States are free to adopt competency standards that are more elaborate than the *Dusky* formulation." 509 U.S. at 402. "[T]he Due Process Clause does not impose these additional requirements," however. *Ibid.*; accord *id.* at 404 (Kennedy, J., concurring in part and concurring in the

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gued, no higher standard should apply "even assuming that the ability to conduct a defense at trial requires some higher level of functioning than the ability to provide meaningful assistance to counsel." *Id.* at 16. The government suggested that requiring a higher constitutional standard to proceed pro se at trial would be "arguably impermissible" under *Faretta*, *id.* at 17, but did not address that question in any depth. And although the government criticized the Ninth Circuit's ill-defined multiplicity of competency standards, it focused primarily on the pitfalls of treating *waivers* of the right to stand trial or to counsel differently from waivers of other rights. See *id.* at 17-19. There is, of course, no question after *Godinez* that a State may adopt a single standard for competency to stand trial and competency for self-representation, since the single-standard approach will be the easiest to administer. But the question whether a State may have a single competency standard and the question whether it must are very different questions, and *Godinez* does not answer the latter.

In a subsequent proceeding involving a pro se defendant, the United States contended (and the court agreed) that Zacarias Moussaoui was competent to plead guilty and appear pro se at his capital sentencing; that case did not involve the issue presented here, however, because there was no basis at all to believe that Moussaoui was suffering from any mental disease or defect. Gov't Position on Competency & Def.'s Self-Representation at 8, *United States* v. *Moussaoui*, Crim. No. 01-455-A (E.D. Va. June 7, 2002). That example demonstrates, however, that a distinct standard for competency to self-represent does not undermine *Faretta*, because in cases of defendants with unquestioned competency, the right to self-representation is in no way affected by Indiana's position.

judgment) ("The Due Process Clause does not *mandate* different standards of competency at various stages of or for different decisions made during the criminal proceedings.") (emphasis added).

2. In *Godinez* this Court held that the trial court had not violated the Due Process Clause by *accepting* Moran's plea and his waiver of counsel. The Court did not consider or decide whether Moran's rights under *Faretta* would have been violated if his waiver had been rejected. Competency to waive a constitutional right does not create a correlative constitutional right to have that waiver accepted. *Singer* v. *United States*, 380 U.S. 24, 34-35 (1965). Compare *Godinez*, 509 U.S. at 397 n.7, 402 (holding that the Constitution permits a competent defendant, acting knowingly and voluntarily, to plead guilty and thereby waive the right to a jury trial), and *Parke* v. *Raley*, 506 U.S. 20, 28-29 (1992) (same), with *North Carolina* v. *Alford*, 400 U.S. 25, 38 n.11 (1970) (stating that "[a] criminal defendant does not have an absolute right under the Constitution to have his guilty plea accepted by the court"), and *Singer*, 380 U.S. at 36 (finding "no constitutional impediment to conditioning a waiver of [the jury trial] right on the consent of the prosecuting attorney and the trial judge").

If there were any doubt on this point, the Court's closing words in *Godinez* eliminate it: "States are free to adopt competency standards that are more elaborate than the *Dusky* formulation." 509 U.S. at 402. And the Court cited *Medina* v. *California*, 505 U.S. 437 (1992), in which it had declined to read the Due Process Clause to preclude allocation of the burden of proving in competence to the defendant. As the Court noted in *Medina*, "[t]raditionally, due process has required that only the most basic procedural safeguards be observed; more

subtle balancing of society's interests against those of the accused ha[s] been left to the legislative branch." *Id.* at 453 (quoting *Patterson* v. *New York*, 432 U.S. 197, 210 (1977)). The Court did not engage in that "subtle balancing" in *Godinez*, nor did it foreclose state courts from doing so in a case like this one.

Godinez leaves open at least one way in which States can respond to the problems created by mentally ill defendants proceeding pro se: increasing the *overall* threshold for competency to stand trial above the constitutional floor. That course, however, would force the State to forgo the prosecution of defendants who are competent to stand trial under *Dusky*, whether or not they request self-representation. The question here is whether States must incur that significant cost or whether instead they may pursue a more targeted course of adopting a standard of competency for self-representation higher than the constitutional minimum. Nothing in *Godinez* forbids that more targeted approach.

Thus, *Godinez* is entirely consistent with this Court's repeated conclusion that the Constitution permits different jurisdictions to adjudicate issues of competency and insanity using varying substantive and procedural standards, so long as the basic procedure is "constitutionally adequate." *Medina*, 505 U.S. at 453 (citation omitted). For example, the Court has held that criminal defendants may be constitutionally entitled to a re-evaluation of competency, but the Court "did not hold that [a particular] procedure * * * was constitutionally mandated," and "the Court [did not] prescribe a general standard with respect to the nature or quantum of evidence necessary to require" judicial inquiry into competency. *Drope*, 420 U.S. at 172 (citing *Pate* v. *Robinson*, 383 U.S. 375 (1966)). See also *Panetti*, 127 S. Ct. at 2862

("[W]e do not attempt to set down a rule governing all competency determinations."); *McKaskle*, 465 U.S. at 183 (*Faretta* allows but "does not require" trial judges to permit hybrid representation, with the pro se defendant and his standby counsel jointly participating in the defense).

It is this Court's "established practice [to] permit[] the States, within the broad bounds of the Constitution, to experiment with solutions to difficult questions of policy." *Smith* v. *Robbins*, 528 U.S. 259, 272 (2000). By declining in *Godinez* to constitutionalize the difficult question of competency any further, the Court left open avenues for this healthy experimentation.

3. Respondent argues (Br. in Opp. 21-22) that *Godinez*'s endorsement of "more elaborate" state competency requirements *forbids* States from denying anyone competent to stand trial the right to represent himself. These "more elaborate" standards for waiving the right to counsel, respondent argues, may be adopted only alongside identical "more elaborate" standards for evaluating competency to stand trial. But nothing in *Godinez* supports the notion that the Court intended to impose such a sweeping requirement of parity. Such a holding would be inconsistent with the "modest aim" of the *Dusky* competency standard, 509 U.S. at 402. Rather, the Court considered only the constitutional standard for sustaining a waiver of Sixth Amendment rights; it did not consider the constitutional validity of rejecting such a waiver by a mentally ill defendant.

To be sure, *Faretta* places some limits on the State's ability to increase the requirements for waiving the right to counsel above the constitutional floor. For some constitutional rights, there is no little or no countervailing and strong interest, so the State could, in theory,

rule out the possibility of waiver altogether. *Faretta* obviously precludes that course with respect to the right to counsel. However, both before and after *Godinez*, the proper analysis of a restriction on self-representation turns on whether it furthers a sufficiently weighty state interest to overcome the defendant's interest in proceeding pro se. As shown above, the particular problem of mentally ill defendants defending themselves at trial pro se is one with which individual jurisdictions may grapple. In holding that the Constitution does not provide a single answer, this Court did not demonstrate any intent to "pretermit other responsible solutions." *Murray* v. *Giarratano*, 492 U.S. 1, 14 (1989) (Kennedy, J., concurring in the judgment). The court below therefore was incorrect in concluding that *Godinez* rules out any competency-based limits on self-representation.

II. THE STATE'S IMPORTANT INTERESTS ADEQUATELY JUSTIFIED DENYING SELF-REPRESENTATION IN THIS CASE

The foregoing discussion establishes that the Constitution does not categorically forbid individual jurisdictions from establishing a separate test for competency to proceed pro se. Even in circumstances in which a defendant satisfies the constitutional minimum for waiver, an important government interest may justify a further showing. Here Indiana has identified a valid government interest, and the trial court's findings sufficiently demonstrate that in the circumstances of this case the State's interest may overcome respondent's right to self-representation.

1. A State's standard for evaluating self-representation at trial by a mentally ill defendant satisfies the Constitution if it is based on a close fit between the defen-

dant's mental illness and the State's interest in ensuring the fairness and perceived fairness of trials. This Court held in *Faretta* that no defendant may be denied self-representation simply because he lacks legal knowledge or the skills of an attorney, so long as he undertakes to comply with the relevant rules. See 422 U.S. at 834 & n.46.[5] A standard based on the quality of the defendant's legal advocacy or the depth of his knowledge of the hearsay rule would be inconsistent with this principle. By contrast, a standard would plainly be valid if it permits denial of self-representation only when the trial court finds that the defendant's mental illness impairs one or more of the basic competencies that are necessary to act as an advocate at trial without causing the proceedings to degenerate into farce.

Indiana focuses on the basic competency of communication with the jury. Courtroom conduct is another example. As discussed above, in some instances mental illness will predictably and materially impair the defendant's ability to control his demeanor in the courtroom. Conduct in the courtroom plainly implicates the valid governmental interest in the "dignity, order, and decorum" of judicial proceedings. *Allen*, 397 U.S. at 353. A finding, based on credible expert evidence (or the court's own experience), that the defendant, while otherwise competent, lacks the capability to control highly disrup-

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[5] The trial court's colloquy with respondent after his first request to proceed pro se appears inconsistent with this principle. See J.A. 514a-518a. That colloquy, however, is not relevant here. The trial court denied respondent's request to represent himself at his first trial based on the untimeliness of the request, see p. 5, *supra*, and the Indiana appellate courts reversed only respondent's convictions obtained at the *second* trial. See Pet. App. 15a, 31a.

tive outbursts could be an adequate basis to deny self-representation.

Similarly, a mentally ill defendant's profound inability to concentrate, or to react to events unfolding during a trial, could justify denying permission to represent himself. The essence of the jury trial is the adversarial testing of the State's case, and a pro se defendant's transparent inability to grasp or grapple with the details of the State's evidence could cause reasonable observers to doubt the fairness of the proceedings.

2. The findings made by the trial court in this case (in which the Supreme Court of Indiana concurred, see Pet. App. 14a) adequately identified aspects of respondent's mental condition that would call into question the fairness of a pro se trial. Only after an extended hospitalization did respondent's examining physicians finally determine that he was competent to stand trial—and only *with* the assistance of counsel. See J.A. 232a-233a. And the trial court reasonably understood respondent's underlying mental conditions to lead to conduct that posed a danger to the integrity of the proceedings.

In particular, respondent's lack of focus understandably gave the trial court cause for concern about his ability to respond to the State's evidence or to present a defense. See, *e.g.*, J.A. 221a, 353a, 354a, 362a, 363a, 365a. Respondent's final evaluation by the state hospital suggested that "[h]is thought processes are no longer disorganized," or at least were sufficiently comprehensible that respondent was capable of planning a defense with the assistance of counsel. J.A. 231a; see J.A. 232a-233a. The trial court noted, however, that respondent's own oral and written submissions could be evidence of an inability to focus attributable to respondent's schizophrenia and other mental conditions. See J.A. 527a,

529a. And over the months since respondent's discharge from the state hospital, the trial court had received and reviewed numerous pro se filings from respondent, see J.A. 237a-250a, and thus had a substantial basis to conclude that respondent was not capable of presenting a coherent defense.

3. Other States may formulate standards different from that proposed by Indiana or applied by the trial court in this case. This Court's practice has been to "evaluate state procedures, one at a time, as they come before [it], * * * while leaving 'the more challenging task of crafting appropriate procedures * * * to the laboratory of the States in the first instance.'" *Smith*, 528 U.S. at 758 (quoting *Cruzan* v. *Director, Mo. Dep't of Health*, 497 U.S. 261, 292 (1990) (O'Connor, J., concurring)).

That the standard applied in this case was formulated in the first instance by a state trial court does not in any way undermine its legitimacy. Reasonable limitations on the *Faretta* right, such as the imposition of standby counsel or the rejection of "hybrid" representation, have often been imposed as an exercise of a court's supervisory power rather than through prospective legislation or rulemaking. See *McKaskle*, 465 U.S. at 183, 184; cf. *Smith*, 528 U.S. at 278-279 (upholding California's judicially developed procedure for handling criminal appeals that the appellant's counsel considers frivolous).

It is true that the trial court does not have the last word on the standard to be employed in Indiana. The Supreme Court of Indiana did not speak to that issue, because it thought the trial court had erred as a matter of *federal* law by applying any standard other than *Dusky*. If the state supreme court wishes to refine what

standards for self-representation are permissible as a matter of *state* law, it can do so in a future case, or (to the extent it deems the issue properly preserved) on remand. But this Court could take an important step by making clear to state courts and legislatures that the federal Constitution does not preclude States from treating capacity for self-representation separately from capacity to stand trial.

CONCLUSION

The judgment of the Supreme Court of Indiana should be reversed and the case remanded for further proceedings.

Respectfully submitted.

PAUL D. CLEMENT
Solicitor General
ALICE S. FISHER
Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
WILLIAM M. JAY
Assistant to the Solicitor General
ELIZABETH D. COLLERY
Attorney

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AMICUS CURIAE BRIEF

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IN THE

Supreme Court of the United States

STATE OF INDIANA,

Petitioner,

v.

AHMAD EDWARDS,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF INDIANA

BRIEF OF THE AMERICAN BAR ASSOCIATION AS *AMICUS CURIAE* SUPPORTING PETITIONER

WILLIAM H. NEUKOM
Counsel of Record
PRESIDENT AMERICAN BAR ASSOCIATION
321 North Clark Street
Chicago, IL 60610
(312) 988-5000

Of Counsel:
JON MAY
ROBERT BUSCHEL
JOHN PARRY
PROF. RORY K. LITTLE

Attorneys for Amicus Curiae American Bar Association

213933

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

"May states adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?"

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INTEREST OF THE AMERICAN BAR ASSOCIATION AS *AMICUS CURIAE*[1]

Pursuant to Supreme Court Rule 37.3, *amicus curiae* American Bar Association ("ABA") respectfully requests that, in considering the standard for measuring competency to represent oneself at trial, the Court consider the broad-based consensus views embodied in the Mental Health Standard 7-5.3 and Special Functions of the Trial Judge Standard 6-.3.6(b) of the ABA's Criminal Justice Standards.

The ABA is the world's largest voluntary professional membership organization, and the leading association of legal professionals in the United States. The ABA's membership of over 413,000 attorneys spans all 50 States and other jurisdictions, and includes attorneys in private law firms, corporations, nonprofit organizations, government agencies, and prosecutorial and public defender offices, as well as judges, legislators, law professors, and students.[2] The ABA's mission is "to

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1. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus curiae*, or its counsel, made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief.

2. Neither this brief nor the decision to file it should be interpreted to reflect the views of any member of the judiciary associated with the ABA. No inference should be drawn that any member of the Judicial Division Council has participated in the adoption or endorsement of the positions in this brief. This brief was not circulated to any member of the Judicial Division Council prior to filing.

be the national representative of the legal profession, serving the public and the profession by promoting justice, professional excellence and respect for the law."[3] Among the ABA's Goals are "to promote improvements in the American system of justice" and "to provide ongoing leadership in improving the law to serve the changing needs of society."[4]

One of the ABA's most prominent efforts to achieve these goals has been its development of the ABA Criminal Justice Standards. The ABA has created, refined, and approved these Standards over the last forty years, through broadly representative task forces made up of prosecutors, judges, defense lawyers, academics and others, and the efforts of the diverse membership of the ABA. These Standards have frequently been referred to, and adopted, by courts, legislatures, and executive branch law enforcement agencies. As this Court recently recognized, "We long have referred to these ABA Standards as guides to determining what is reasonable." *Rompilla* v. *Beard*, 545 U.S. 374, 387 (2005) (quoting *Wiggins* v. *Smith*, 539 U.S. 510, 524 (2003) and *Strickland v. Washington*, 466 U.S. 668 (1984)) (internal punctuation and quotation marks omitted).

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3. American Bar Association, *ABA Mission and Association Goals*, http://www.abanet.org/about/goals.html.

4. American Bar Association, *ABA Policy and Procedures Handbook, 2007–2008*, at 1 (Goals I & III); http://www.abanet.org/about/goals.html.

The ABA Criminal Justice Standards include Standards on the Special Functions of the Trial Judge and Mental Health Standards.[5] Standard 6-3.6 on the Special Functions of the Trial Judge, which is set out in full in the Appendix, addresses the inquiry the trial court should make in determining whether a criminal defendant has made a knowing and voluntary waiver of his right to counsel. Mental Health Standard 7-5.3, which is also set out in full in the Appendix, offers a test for trial courts to use to determine whether a defendant who suffers from a mental infirmity has a present ability to knowingly, voluntarily, and intelligently waive his or her right to counsel in a criminal proceeding.

As with all of its Standards, the ABA has devoted substantial resources and attention to ensuring that Special Functions of the Trial Judge Standard 6-3.6 and Mental Health Standard 7-5.3 reflect the consensus of prosecutors, defenders, and judges, and represent a realistic and balanced approach to criminal law enforcement.

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5. The ABA Standards for Criminal Justice: Special Functions of the Trial Judge are available at http://www.abanet.org/crimjust/standards/specialfunctions.pdf..

The ABA Standards for Criminal Justice: Mental Health Standards at available at http://www.abanet.org/crimjust/standards/mentalhealth.pdf.

SUMMARY OF ARGUMENT

A criminal defendant has the right to represent himself or herself, but waiver of counsel must be made knowingly and voluntarily. It is particularly difficult for a trial court to determine whether a mentally ill defendant can competently make such a knowing and voluntary waiver. Thus, this Court in *Godinez v. Moran*, 509 U.S. 389, 402 (1993), left room for States to decide whether a searching inquiry is necessary for determining competency to waive counsel.

The ABA submits that state courts should be permitted some latitude in determining the process used to test whether a defendant meets the competence standard to both stand trial and waive his or her right to counsel as set forth in *Godinez*. To assist state courts in performing that function, the ABA's Mental Health Standards and Special Functions of the Trial Judge Standards furnish a useful template that represents a broad consensus of prosecutors, defense counsel, jurists, and mental health experts.

The ABA's standards are consistent with this Court's suggestion in *Godinez* and other cases that courts, in making the competency inquiry, should consider how defendants' impairments bear on their ability to competently, knowingly, and intelligently make certain choices affecting the conduct of their trials.

ARGUMENT

THE AMERICAN BAR ASSOCIATION'S CRIMINAL JUSTICE STANDARDS ON MENTAL HEALTH AND ON THE SPECIAL FUNCTIONS OF THE TRIAL JUDGE PROVIDE A USEFUL TEMPLATE FOR DETERMINING WHETHER A DEFENDANT HAS COMPETENTLY, KNOWINGLY, AND VOLUNTARILY WAIVED THE ASSISTANCE OF COUNSEL AT TRIAL.

In *Godinez v. Moran*, 509 U.S. 389 (1993), this Court held that due process does not demand that a defendant satisfy a higher standard for competence to waive counsel than for establishing competence to stand trial. This Court instead concluded that the mental capacity needed to understand the proceedings and to assist counsel at trial is no greater than the mental capacity needed to comprehend the hazards of self-representation. *Id.* at 399-400.

While holding that the ultimate levels of required mental competence are the same, this Court nonetheless recognized that the inquiry necessary to determine if a defendant is competent to stand trial may be distinct from the inquiry needed to determine if the defendant's waiver of his right to counsel is knowing and voluntary. *Id.* at 401. The Court stated:

> The focus of a competency inquiry is the defendant's mental capacity; the question is whether he has the *ability* to understand the proceedings. . . . The purpose of the "knowing and voluntary" inquiry, by contrast, is to

> determine whether the defendant actually does understand the significance and consequences of a particular decision and whether the decision is uncoerced.

Id. at 401 n.12 (internal citation omitted, emphasis in original). Thus, before any defendant is permitted to proceed pro se, courts are required to determine whether the defendant is fully aware of the hazards of self-representation, *Powell v. Alabama*, 287 U.S. 45, 69 (1932), and, despite understanding those hazards, "knowingly and intelligently" waives the assistance of counsel. *Faretta v. California*, 422 U.S. 806, 835 (1975) (citing *Johnson v. Zerbst*, 304 U.S. 458, 464-465 (1938)). *Godinez* did not adopt a specific methodology for meeting this standard, but instead left to the States the task of developing procedures for determining whether a defendant's waiver of this right was competent, knowing, and voluntary. 509 U.S. at 402.

The Court's approach of requiring States to craft a meaningful inquiry to determine a defendant's competence is consistent with its recognition in other contexts that an individual who is otherwise competent to stand trial may be impaired in significant ways that bear on that person's ability to competently, knowingly, and intelligently make choices affecting the conduct of his or her trial:

> Mentally retarded persons frequently know the difference between right and wrong and are competent to stand trial. Because of their impairments, however, by definition they have diminished capacities to understand and

> process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.

Atkins v. Virginia, 536 U.S. 304, 318 (2002). Amicus suggests that mentally ill defendants might share some of the same challenges as this Court has noted concerning mentally retarded defendants: "Mentally retarded defendants may be less able to give meaningful assistance to their counsel and are typically poor witnesses, and their demeanor may create an unwarranted impression of lack of remorse for their crimes." *Id.* at 320-21.

This Court has given States some latitude in defining mental retardation and considerable latitude in implementing that definition procedurally. *Id.* at 317. This Court has also accorded States latitude, for example, in devising standards for determining whether forms of mental illness constitute insanity. *Clark v. Arizona*, 126 S. Ct. 2709, 2722 (2006). Outside of prophylactic measures that provide minimum constitutional protection, this Court has allowed States to adopt different procedures as long as the procedures protect those minimum constitutional standards. *Smith v. Robbins*, 528 U.S. 259, 265 (2000).

In light of these precedents, *Amicus* respectfully submits that this Court afford the States similar latitude here to craft an inquiry to assess competence to knowingly and voluntarily waive the right to counsel. To assist States in performing that function, Amicus submits that the ABA's Mental Health Standards and Special Functions of the Trial Judge Standards furnish a useful template.

ABA Special Functions of the Trial Judge, Standard 6-3.6 recommends that, before allowing a defendant to proceed without the assistance of counsel, trial judges determine that the defendant:

> (i) has been clearly advised of the right to the assistance of counsel, including the right to the assignment of counsel when the defendant is so entitled;
>
> (ii) is capable of understanding the proceedings; and
>
> (iii) has made an intelligent and voluntary waiver of the right to counsel.

American Bar Association, *Standards for Criminal Justice: Special Functions of the Trial Judge* (3d ed. 2000).[6]

If the court possesses "a good faith doubt of the mental competence of the defendant to waive counsel or to represent himself or herself," ABA Standard for Mental Health 7-5.3 recommends that the trial judge

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6. The ABA standards recognize that the court's obligation is not just to the accused, but also to protect the integrity of the system as a whole. *Trial Judge Standard 6-3.6*, Commentary at 59; *see also*, Martin Sabelli & Stacy Leyton, *Train Wrecks and Freeway Crashes; An Argument for Fairness and Against Self Representation in the Criminal Justice System*, 91 J. CRIM. L. & CRIMINOLOGY 161 (2000) (contending that any court procedure must be adequate to preserve the public's confidence in the fairness of the criminal justice system and the ability of both parties meaningfully to present their case.).

order a pretrial mental evaluation.[7] Based on the results of that evaluation, the judge should determine whether the defendant has:

> the present ability to knowingly, voluntarily, and intelligently waive the constitutional right to counsel, to appreciate the consequences of the decision to proceed without representation by counsel, to comprehend the nature of the charge and proceedings, the range of applicable punishments, and any additional matters essential to a general understanding of the case.

Standard 7-5.3(b). If the defendant lacks these abilities, Standard 7-5.3(a) provides that the court should not permit the defendant to proceed without the assistance of counsel.

Based upon the broad consensus of individuals who participated in the development of the ABA Standards, Amicus respectfully submits that the approach outlined above is appropriately tailored to assist a court in determining whether a defendant's waiver of counsel is knowing and voluntary. It thus provides a useful template for States to adopt, consistent with this Court's suggestion in *Godinez*, for the determination of whether a waiver of the right to counsel is knowing and voluntary.

---

7. ABA, *Criminal Justice Mental Health Standards* at 274 (1989). Additionally, the Commentary to *Trial Judge Standard 6-3.6* suggests that the court should advise the defendant, of, among other things, "the right to counsel and the importance of having counsel" and "the dangers and disadvantages of self-representation." *Trial Judge Standard 6-3.6*, Commentary at 60.

CONCLUSION

For the foregoing reasons, the American Bar Association requests that the Court reverse the decision below.

Respectfully submitted,

WILLIAM H. NEUKOM
Counsel of Record
PRESIDENT AMERICAN BAR ASSOCIATION
321 North Clark Street
Chicago, IL 60610
(312) 988-5000

Of Counsel:
JON MAY
ROBERT BUSCHEL
JOHN PARRY
PROF. RORY K. LITTLE

Attorneys for Amicus Curiae
American Bar Association

APPENDIX

APPENDIX A

Excerpt from
American Bar Association
***Standards for Criminal Justice: Special Functions of the Trial Judge* (3rd Ed. 2000)**

Part III
Maintaining the Decorum of the Courtroom

Standard 6-3.6. The defendant's election to represent himself or herself at trial

(a) A defendant should be permitted at the defendant's election to proceed in the trial of his or her case without the assistance of counsel only after the trial judge makes thorough inquiry and is satisfied that the defendant:

(i) has been clearly advised of the right to the assistance of counsel, including the right to the assignment of counsel when the defendant is so entitled;

(ii) is capable of understanding the proceedings; and

(iii) has made an intelligent and voluntary waiver of the right to counsel.

(b) When a defendant undertakes to represent himself or herself, the court should take whatever measures may be reasonable and necessary to ensure a fair trial.

Appendix A

Special Functions of the Trial Judge

Commentary

Judicial proceedings must be conducted with dignity and composure. Outbursts, disruption, and histrionics cannot be allowed to infect the proceedings and influence the fact-finder, thereby undermining respect for the criminal justice process. The trial judge must use his or her judicial authority to maintain control of the proceedings. Normally, the judge should use the least severe measures available to maintain order and decorum in the courtroom. Usually, order can be maintained by discussion, recess, or admonitions and warnings, if necessary. Judges are encouraged to use these devices instead of the more onerous sanctions of fines and contempt, which require a hearing, and which should be reserved for the truly serious cases.[1] A contempt citation may prevent a future admission *pro hac vice*, as is indicated in Standard 6-3.11.

Subsection (b) is the former last sentence of Standard 6-3.4 which has been expanded into two sentences by adding and suggesting a preference that any judicial comment or reprimand take place outside the presence of the jury. The subsection also instructs the trial judge, when issuing reprimands or warnings, to avoid arguments with participants in the proceedings

---

1. *See* Louis E. Raveson, *Advocacy and Contempt: Constitutional Limitations on the Contempt Power*, 65 WASH. U. L. REV. 477 (1990) (suggesting that the contempt power should be used in only the most severe cases).

and to avoid unnecessary criticism of those who are before him or her. Especially when commenting on the conduct of witnesses or spectators who may be unfamiliar with courtroom procedures, a reprimand should be delivered in a courteous manner.[2] When it becomes imperative, the judge is empowered to take further steps by use of the sanctions discussed in Part IV.

---

2. *See* Standard 6-3.10 and commentary.

APPENDIX B

Excerpt from
American Bar Association
Criminal Justice Mental Health Standards
(ABA 1989)

Part V
Competence on Other Issues

Standard 7-5.3. Competence to waive counsel and to proceed without assistance of counsel

(a) A defendant who is mentally incompetent to waive counsel or to defend himself or herself at trial without the assistance of counsel should not be permitted to stand trial without the assistance of counsel.

(b) The test for determining the competence to waive counsel and to represent oneself at trial should be whether the defendant has the present ability to knowingly, voluntarily, and intelligently waive the constitutional right to counsel, to appreciate the consequences of the decision to proceed without representation by counsel, to comprehend the nature of the charge and proceedings, the range of applicable punishments, and any additional matters essential to a general understanding of the case.

(c) If, after explaining the availability of a lawyer and making sufficient inquiry of a defendant professing a desire to waive counsel and represent himself or herself, the trial judge has a good faith doubt of the mental competence of the defendant to waive counsel or

to represent himself or herself the judge should order a pretrial mental evaluation of the defendant according to the procedures set forth in part IV of this chapter.

(d) After obtaining the report of the evaluators, the court should hold a hearing on the issues raised according to the procedures set forth in part IV of this chapter.

(i) If, after hearing, the court determines that the defendant is competent to waive counsel and to represent himself or herself, the court should proceed with the case. The court in any such case should consider the appointment of standby counsel in accordance with standard 6-3.7 to assist the defendant or, if it should prove necessary, to assume representation of the defendant.

(ii) If, after hearing, the court should determine that the defendant is incompetent to waive counsel and is incompetent to stand trial or to plead, the court should proceed to issues of treatment and habilitation in accordance with part IV of this chapter.

(iii) If, after hearing, the court should determine that the defendant is competent to stand trial but is incompetent to waive counsel and to proceed without assistance of counsel, the court should appoint counsel to represent the defendant and should proceed to trial of the case.

Appendix B

Commentary Introduction

Standard 7-5.3 incorporates a special criterion for determining a defendant's mental competence to relinquish the sixth amendment right to counsel and to exercise the correlative constitutional right of self-representation. It incorporates a judgment that the criterion governing these important rights must be more stringent than that governing triability, because defendants must be able to recognize the dangers of self-representation and to select intelligently between self-representation and representation by counsel. It also reflects the judgment that a defendant incompetent to waive counsel but otherwise competent to undergo trial must be represented by retained or appointed counsel.

Related Standards

ABA, Standards for Criminal Justice 5-7.2, 6-3.6, 7-4.1 to 7-4.15

Commentary

The sixth amendment right to counsel is perhaps the single most important constitutional right for the protection of state and federal criminal defendants.[1] That right,

1. The leading case is Gideon v. Wainwright, 372 U.S. 335 (1963), which established the right to assigned counsel as fundamental to a fair trial. Earlier decisions include Johnson v. Zerbst, 304 U.S. 458 (1938), which provided for mandatory appointment of counsel for indigent defendants in federal criminal cases, and Chandler v. Fretag, 348 U.S. 3 (1954), in which

(Cont'd)

however, has two dimensions: (1) counsel must be provided for financially unable criminal defendants who desire representation; and (2) competent defendants who wish to represent themselves, and who meet minimum criteria for lay understanding of criminal pretrial and trial procedure, must be allowed to represent themselves.[2] The choice must be a defendant's, not a choice made ostensibly on a defendant's behalf by someone else.[3] The selection of one of these rights, however, clearly constitutes a relinquishment of the other.

(Cont'd)

the Court referred to the right to retained counsel as "unqualified." *Id.* at 9. The right extends to misdemeanor cases in which a defendant actually is imprisoned. Scott v. Illinois, 440 U.S. 367 (1979); Argersinger v. Hamlin, 407 U.S. 25, 36-37 (1972) (even relatively minor cases "often require the presence of counsel to ensure the accused a fair trial").

2. Faretta v. California, 422 U.S. 806 (1975). *See also* McKaskle v. Wiggins, 465 U.S. 168, *reh'g denied*, 465 U.S. 1112 (1984) (proper functions of standby counsel); Singer v. United States, 380 U.S. 24 (1965) (a defendant who waived the right to trial by jury did not have the right to insist on a bench trial); United States v. Powers, 622 F.2d 317 (8th Cir.), *cert. denied*, 449 U.S. 837 (1980) (the right to a public trial does not accord an unqualified right to insist that the public be excluded). Some courts have held that an improper denial of the right of self-representation is reversible error without a need to show prejudice. *See, e.g.*, United States v. Price, 474 F.2d 1223, *reh'g denied*, 484 F.2d 485 (9th Cir. 1973); United States v. Dougherty, 473 F.2d 1113 (D.C. Cir. 1972).

3. *See* Faretta v. California, 422 U.S. at 834 ("It is the defendant, therefore, who must be free personally to decide whether in his particular case counsel is to his advantage.").

Appendix B

Defendants must be mentally competent to exercise an election between self-representation and representation by counsel. Arguably, a decision to exercise the right of self-representation requires a greater degree of mental competency than a decision to seek trial representation by counsel; much more is at stake in the former decision,[4] even though some courts have been content to apply a single competency criterion to both decisions.[5] In this context, a focused test for competency comprises three elements: (1) competence to stand trial, (2) competence to comprehend the

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4. In *Faretta*, for example, the Supreme Court pointed out that many of the "traditional benefits" associated with representation by counsel are lost through self-representation. Therefore, a defendant must make a "free choice" "knowingly and intelligently" to forgo those benefits. Faretta v. California, 422 U.S. at 836 (*citing* Johnson v. Zerbst, 304 U.S. at 464-465). The trial court record must establish that a defendant " 'knows what he is doing and his choice is made with eyes open.' " *Ibid.* (*citing* Adams v. United States *ex rel.* McCann, 317 U.S. 269, 279 (1942), *reh'g denied*, 317 U.S. 713 (1943)). In Westbrook v. Arizona, 384 U.S. 150 (1966), the Court noted that a trial court is under a special "protecting duty" to ensure "an intelligent and competent waiver by the accused" of assistance by counsel. *Id.* at 150 (*citing* Johnson v. Zerbst, 304 U.S. at 465). These decisions support a higher measure of competence to exercise the right of pro se representation than to stand trial with the assistance of counsel.

5. *See* United States v. Odom, 423 F.2d 875 (9th Cir. 1970); People v. Reason, 37 N.Y.2d 351, 334 N.E.2d 572, 372 N.Y.S.2d 614 (1975); Silten & Tullis, *Mental Competency in Criminal Proceedings*, 28 Hastings L.J. 1053 (1977) [hereinafter cited as Silten & Tullis]. *See generally* Weiner, *Mental Disability and the Criminal Law*, in THE MENTALLY DISABLED AND THE LAW 693, 697 (S. Brakel, J. Parry & B. Weiner eds., 3d ed. 1985).

proceedings, and (3) competence knowingly and voluntarily to waive a constitutional right.

The first element, competence to stand trial with the assistance of counsel,[6] does not suffice for self-representation, although it is the threshold to a proper determination of the second element of competency. Defendants must be able to appreciate the consequences of a decision to conduct their own defense, and courts are responsible under *Faretta v. California*[7] to determine that defendants are competent to do so.[8] This

---

6. *See* standard 6-3.6 and commentary; standard 7-4.1 and related commentary for a discussion of the criteria governing competence to stand trial.

7. 422 U.S. 806 (1975).

8. One commentator has suggested a greater functional ability is required to represent one's self than to undergo trial while represented, entailing not merely a selection from alternatives posed by counsel, but the necessity of conceiving, developing, and implementing defense strategies. Note, *The Identification of Incompetent Defendants: Separating Those Unfit for Adversary Combat from Those Who Are*, 66 Ky. L.J. 666 (1978). Other writers have suggested that unrepresented defendants need the mental capacity to make tactical decisions during trial unaided by counsel, and that "... the higher standard of *Westbrook* necessarily involves an assessment of the defendant's ability to conduct his own defense." Silten & Tullis, *supra* note 5, at 1068. The Supreme Court, however, has never imposed such a requirement. Other courts consider the issue one of competence to make a valid choice, not competence to function in the capacity of a lawyer: "The significant issue, then, is the

(Cont'd)

in turn requires that judges adequately warn defendants about the dangers of self-representation and reassure themselves that defendants understand and appreciate those dangers sufficiently to make a reasoned choice between constitutional alternatives.[9] The third element

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(Cont'd)
sufficiency of the trial court's inquiry into petitioner's capacity to make an intelligent choice." United States *ex rel.* Konigsberg v. Vincent, 388 F. Supp. 221, 226 (S.D.N.Y.), *aff'd* 526 F.2d 131 (2d Cir. 1975), *cert. denied*, 426 U.S. 937 (1976). *See also* United States v. Spencer, 439 F.2d 1047 (2d Cir. 1971); Minor v. United States, 375 F.2d 170, *cert. denied*, 389 U.S. 882 (1967); People v. Teron, 23 Cal. 3d 103, 588 P.2d 733, 151 Cal. Rptr. 633 (1979), *and see* People v. Wolozon, 138 Cal. App. 3d 456, 188 Cal. Rptr. 35 (1982). Accordingly, trial courts should not substitute their views of the wisdom of self-representation for those of defendants; the latter must accept the unpleasant consequences of their bad decisions. Minor v. United States, 375 F.2d 170 (1967); People v. Teron, 23 Cal. 3d 103, 588 P.2d 733, 151 Cal. Rptr. 633 (1979); Goode v. State, 403 So. 2d 931 (Fla. 1979). On the other hand, the capacity for pro se representation is not to be determined on the basis of a given defendant's technical knowledge or strategic disadvantages flowing from a decision to forgo representation by counsel.

9. The exact limits of what trial courts must ascertain are unclear. The plurality opinion in Von Moltke v. Gillies, 332 U.S. 708 (1948), indicates that courts must determine that a defendant understands:

1. the nature of the charges,
2. the statutory offenses included within those charges,
3. the range of allowable punishments if convicted,
4. possible defenses to the charge, and circumstances in mitigation thereof,

(Cont'd)

relates to a defendant's ability "knowingly and intelligently" to relinquish the sixth amendment right to representation by counsel.[10]

(Cont'd)

5. all other facts essential to a broad understanding of the matter.

Id. at 724.

However, the litigation concerned the validity of a guilty plea from an uncounseled defendant, so that the decision may have melded concerns over waiver of counsel for purposes of a plea hearing with exercise of the right of self-representation at trial. For example, the plurality opinion in *Von Moltke* suggested that a court should familiarize itself with the facts of the case, including all defenses to the pending charges, in order to advise a defendant. That would be proper for purposes of considering a tendered guilty plea but most inappropriate if a defendant will undergo trial. Clearly, however, a court should advise a defendant about the dangers of pro se representation and satisfy itself that the defendant has the understanding delineated in standard 6-3.6(a).

10. Edwards v. Arizona, 451 U.S. 477, *reh'g denied*, 452 U.S. 973 (1981) (a "reasoned judgment and a deliberate choice based upon adequate knowledge of what that fundamental right encompasses"); Johnson v. Zerbst, 304 U.S. 458 (1938) (an "intentional relinquishment or abandonment of a known right or privilege"); *see also* United States *ex rel.* Brown v. Fay, 242 F. Supp. 273 (S.D.N.Y. 1965). *See* Westbrook v. Arizona, 384 U.S. 150 (1966): "This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused." *Id.* at 150 (*citing* Johnson v. Zerbst, 304 U.S. 458, 465 (1983)). *See also* United States *ex rel.* Konigsberg v. Vincent, 388 F. Supp. 221

(Cont'd)

Appendix B

Paragraph (a) of the standard establishes unequivocally that defendants who are mentally incompetent either to waive representation by counsel or to represent themselves during a criminal trial should not be allowed to undergo trial without retained or assigned counsel. If defense counsel, the prosecuting attorney, or the court has a good faith doubt about the defendant's competency to undergo trial while represented, the appropriate measures should be taken under part IV. Paragraph (b) sets out the more precise criteria to ascertain competency to waive counsel, based on a present ability: (1) knowingly, voluntarily, and intelligently to relinquish the right to representation by an attorney; (2) to understand and appreciate the consequences of a decision to represent one's self; and (3) to understand and comprehend the nature of the charge, criminal proceedings, applicable sanctions, and anything else essential to a general understanding of the case. By intent, the criteria are phrased broadly so that ad hoc evaluations can be made of defendants' mental capacity to perform the functions to be expected of them at trial.

(Cont'd)

(S.D.N.Y.), *aff'd*, 526 F.2d 131 (2d Cir. 1975), *cert. denied*, 426 U.S. 937 (1976). A court, therefore, must consider directly whether a tendered waiver of representation by counsel is submitted intelligently and competently, an issue that cannot be resolved incidentally to a decision concerning competence to undergo trial while represented by counsel. Westbrook v. Arizona, 384 U.S. 150 (1966).

Appendix B

As provided elsewhere in the standards,[11] a court faced with a defendant desirous of exercising the right of self-representation is obliged to apprise the defendant of the right to representation by and assignment of counsel. The court also must ascertain that the defendant has the intelligence and capacity to understand the consequences of a decision to relinquish representation by counsel, the nature of the charges and proceedings, the range of permissible punishments, and anything else requisite to a broad understanding of the criminal case. If in the course of that colloquy, the court generates a good faith doubt about the defendant's present mental competence as delineated in paragraph (b), it should order a pretrial mental evaluation under paragraph (c), under the same procedures that govern mental evaluations to determine competency to undergo trial while represented by counsel.[12]

After evaluation reports have been transmitted to the court, it should conduct a hearing in the usual form[13] to ascertain the defendant's competence. One of three alternative determinations of the matter may ensue. The first, covered by subparagraph (d)(i), is a finding that the defendant is competent according to the criteria in paragraph (b). In that event, trial may proceed,[14]

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11. *See* standard 6-3.6(a) and commentary.

12. *See* standards 7-4.4 through 7-4.6 and commentary.

13. *See* standards 7-4.7 through 7-4.9 and commentary.

14. *See* standard 6-3.6(b): "When a litigant undertakes to represent himself or herself, the court should take whatever measures may be reasonable and necessary to ensure a fair trial."

although the court should consider appointment of standby counsel[15] to assist the defendant or to take over the conduct of the case if the defendant proves incapable of conducting a defense personally.

A second finding would be that the defendant is both incompetent to elect self-representation and to stand trial or plead guilty or nolo contendere. In that event, according to subparagraph (d)(ii), the court should determine the need for treatment or habilitation and enter an appropriate order.[16]

A third finding would be that the defendant is incompetent to waive representation by counsel, but otherwise is competent to undergo trial while represented by an attorney. In that event, under subparagraph (d)(iii),

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15. *See* standard 6-3.7; McKaskle v. Wiggins, 465 U.S. 168, *reh'g denied*, 465 U.S. 1112 (1984).

16. *See* standards 7-4.9 through 7-4.11 and commentary. The same special procedures and dispositional measures under standards 7-4.12 and 7-4.13 should be available in this context as in cases of nontriable defendants. It may be proper to use psychotropic medications in treating defendants incompetent to waive counsel, if the procedural safeguards described in standard 7-4.14 are observed. *See* Bennett, *A Guide Through Selected ABA Standards Relating to Incompetence to Stand Trial*, 53 Geo. Wash. L. Rev. 375, 408-412 (1985). Credit against sentence for periods of involuntary commitment must be given. *See* standard 7-4.15 and commentary.

the court should see that the defendant has retained counsel or, if financially unable, receives appointed counsel.[17]

Although the approach embodied in standard 7-5.3 is not duplicated precisely in any jurisdiction at the present time, it clarifies for legislative consideration the procedures mandated by *Faretta v. California* and the appropriate system responses to mental incompetency in its several forms.

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17. Although standards 5-6.1 and 5-6.2 assume that counsel should be provided only for defendants wholly or partially unable to afford counsel, implementation of subparagraph (d)(iii) may require appointment of counsel for funded defendants who refuse to retain counsel. In that event, reimbursement of the government for the cost of assigned counsel might be achieved through a liberal application of standard 5-6.2.

AMICUS CURIAE BRIEF

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IN THE

Supreme Court of the United States

STATE OF INDIANA,
Petitioner,

v.

AHMAD EDWARDS,
Respondent.

On Writ of Certiorari to the Supreme Court of Indiana

BRIEF FOR THE AMERICAN PSYCHIATRIC ASSOCIATION AND AMERICAN ACADEMY OF PSYCHIATRY AND THE LAW AS *AMICI CURIAE* IN SUPPORT OF NEITHER PARTY

RICHARD G. TARANTO
(Counsel of Record)
FARR & TARANTO
1220 19th Street, NW
Suite 800
Washington, DC 20036
(202) 775-0184

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

QUESTION PRESENTED

Whether a State may adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial.

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INTEREST OF *AMICI CURIAE*

The American Psychiatric Association (APA), with more than 36,000 members, is the Nation's largest association of physicians who specialize in psychiatry. The American Academy of Psychiatry and the Law (AAPL), with approximately 2000 psychiatrist members, is an organization of psychiatrists dedicated to excellence in practice, teaching, and research in forensic psychiatry, a subspecialty recognized by the Accreditation Council of Graduate Medical Education. The Academy sponsors numerous educational activities and programs and is engaged in the development of professional and ethical standards of practice for forensic psychiatrists

Both organizations have regularly participated as *amici curiae* in this Court. Their members deal frequently with competency issues, in court and elsewhere. They have an interest in ensuring that important legal decisions reflect relevant professional learning and, here, in seeing that a criminal defendant's mental illness not render his trial unreliable.[1]

STATEMENT

The record establishes that Ahmad Edwards has serious psychoses: the examining experts diagnosed schizophrenia or delusional disorders. *See* JA 21a, 25a, 37a, 88a, 163a-64a, 196a, 220a, 232a; *see also* JA 220a (depressive disorder). The charges against Edwards are that, on July 12, 1999, he shoplifted shoes and then, upon being chased in the street, shot

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[1] Letters of consent to the filing of this brief have been filed with the Clerk. Neither counsel for a party nor a party authored this brief even in part or made any contribution to fund its preparation or submission. *See* S. Ct. R. 37.6.

and wounded two people, before being arrested on the spot. Indiana charged him with theft and criminal recklessness, and with battery and attempted murder. Ed. App. 72-73, 494-95.

For several years, Edwards was found incompetent to stand trial (JA 48a, 206a-11a), based not only on expert reports but on testimony, of experts and of court-appointed counsel, about Edwards' disorganized and delusional thinking and inability to focus and to communicate coherently. *See, e.g.*, JA 353a-56a, 362a-65a, 407a-14a, 419a, 478a-79a, 500a-05a. In 2004, he began taking medication and getting therapy, and he became competent to stand trial. JA 216-28a, 226a-36a; *see* JA 61a, 86a, 158a, 194a (earlier reports); JA 165a (competence restoration impossible without medication). In June 2005, Edwards stood trial, with counsel representing him.

The jury convicted Edwards of theft and criminal recklessness, but it hung on battery and attempted murder. Ed. App. 535-36. When the retrial on the battery and attempted-murder charges was set, Edwards asked to represent himself. The trial judge initially said yes (*see id.* at 540), then reversed course, concluding that Edwards was not competent to represent himself though he was competent to stand trial if represented. *See* Pet. App. 3a, 36a-37a; JA 526a-27a. The jury found Edwards guilty, and the court sentenced him to 30 years in prison for attempted murder. Ed. App. 69.

On appeal, the Indiana Supreme Court held that this Court's decision in *Godinez v. Moran*, 509 US 389 (1993), barred a State from deeming a defendant competent to stand trial but not to represent himself. The court noted that a State may preclude a defendant from representing himself if he has not

voluntarily and intelligently waived the Sixth Amendment right to counsel, but it understood the trial court not to have found lack of such a waiver on Edwards' part. Pet. App. 9a-10a, 14a. Rather, the Indiana Supreme Court concluded that the trial court had applied, and found that Edwards did not meet, a higher standard for a defendant's competency to represent himself at trial than for competency to be tried while represented. *Id.* at 10a-12a. The Indiana Supreme Court observed that "the trial court's conclusion that Edwards was incapable of adequate self-representation was, at a minimum, reasonable." *Id.* at 14a. Nevertheless, it held that the trial court's decision was prohibited, under *Godinez*, by the Sixth Amendment right of a criminal defendant to represent himself, as recognized in *Faretta v. California*, 422 U.S. 806 (1975). Pet. App. 14a. The court reversed the convictions for attempted murder and battery and remanded. *Id.* at 15a.

This Court granted review on the following question: "May States adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?" *Indiana v. Edwards*, 128 S. Ct. 741 (2007).

SUMMARY OF ARGUMENT

The Sixth Amendment right to self-representation—the *Faretta* right—is the only federal constitutional constraint at issue here on whether the State "may" adopt a higher standard for self-representation than for competency to stand trial. In the view of *amici*, a State may permissibly adopt a higher standard without violating that right. That conclusion accords with professional recognition that competency is not a unitary, all-or-nothing concept,

but that individuals may have some competencies and not others.

The *Faretta* right is subject to being overridden to prevent mental illness from destroying the reliability of the adversarial process for testing contested criminal charges. The *Faretta* right is not absolute, and the public interest in this context is a very strong one. This Court's decision in *Godinez* does not resolve this question: the case did not involve the testing of contested criminal charges where the defendant would represent himself.

The public interest involved can permissibly support differentiation of competency to stand trial from competency for self-representation. This Court and jurisdictions nationwide have long concluded that reliability can be protected, in a case with counsel, through a sufficiently careful and robust application of basic requirements of understanding, communication, and decision-making. The required capabilities involve a rational understanding of the proceedings, reasonable ability to communicate with counsel (so as to provide information that counsel may find necessary to carry out the essential task of adversarial testing of the prosecution's case), and ability to make crucial large-scale decisions.

A State may legitimately conclude, however, that more is needed to prevent mental illness from destroying the reliability of the adversarial process if the defendant represents himself, because the defendant personally plays a much greater role. Significant extensions of the capabilities needed to stand trial are required for being one's own lawyer. The defendant must have, and sustain through a tense trial, more extensive decision-making abilities (about numerous issues that arise during trial) and

more extensive abilities to formulate and communicate coherent thoughts (the communications are with sometimes impatient or even hostile judges, juries, witnesses, and adversary counsel, not with a lawyer of one's own who is professionally obliged to assist in the communication). Although the issue is comparatively unexplored, the relevant capabilities are extensions of those already soundly assessed in determining competency to stand trial.

To serve the interest in preventing mental illness from defeating the reliability of adversarial testing of criminal charges, a State should be permitted to demand more extensive abilities before allowing a criminal defendant to represent himself. To avoid unjustified override of the *Faretta* right, however, it may be important, in determining whether an override is justified in a particular case, to consider the role that can be played by standby counsel—which may diminish the role the defendant will play and hence the required capabilities. Likewise, it may be important to consider whether restoration of self-representation competence is possible, and with what delay, before forcing a defendant to go to trial with counsel. What force and shape such considerations should have would best be addressed in a concrete setting, not at the present stage of the present case, where attention was not focused on such matters.

ARGUMENT

I. THE *FARETTA* RIGHT IS SUBJECT TO AN OVERRIDING PUBLIC INTEREST IN PREVENTING MENTAL INCAPACITIES FROM UNDERMINING RELIABLE ADJUDICATION OF CONTESTED CRIMINAL CHARGES

In various contexts, this Court has long recognized that certain mental incapacities can themselves impair important aspects of autonomy and, under appropriate standards reflecting the importance of the interests involved, justify government override of an individual's decisions. Civil commitment, medically indicated involuntary medication based on dangerousness, and medically indicated involuntary treatment to restore competence to stand trial are familiar examples. *See, e.g.*, *Sell v. United States*, 539 U.S. 166 (2003); *Washington v. Harper*, 494 U.S. 210 (1990); *Addington v. Texas*, 441 U.S. 418 (1979). In the *Faretta* context of the present case—which involves a right whose exercise is frequently *against* the defendant's legal interests—strong public interests may likewise override an autonomy interest in self-representation.

A. The *Faretta* Right Is Not Absolute

In *Faretta*, this Court held that the Sixth and Fourteenth Amendments afford a criminal defendant "a right of self-representation" in his own criminal trial. 422 U.S. at 821. It so held in a case where the defendant was "literate, competent, and understanding," *id.* at 835, and it made clear not only that exercise of the right is frequently (perhaps usually)

self-harming,[2] but that the right is not absolute. *Id.* at 834. It may be overridden to prevent "serious and obstructionist misconduct." *Id.* at 834 n.46. Moreover, "a State may—even over objection by the accused—appoint a 'standby counsel' to aid the accused if and when the accused requests help, and to be available to represent the accused in the event that termination of the defendant's self-representation is necessary." *Id.* Self-representation is also subject to protection of "the dignity of the courtroom" and compliance with "procedural and substantive law." *Id.*

In *McKaskle v. Wiggins*, 465 U.S. 168 (1984), the Court rejected a defendant's objection to the role that standby counsel had played. In so ruling, the Court reiterated that a condition of self-representation is that the defendant be "able and willing to abide by rules of procedure and courtroom protocol" (*id.* at 173)—with no accompanying "constitutional right to receive personal instruction from the trial judge on courtroom procedure" (*id.* at 183). *See id.* at 184 (reiterating *Faretta*-noted limits). The Court observed, too, that "the defendant's right to proceed *pro se* exists in the larger context of the criminal trial designed to determine whether or not a defendant is guilty of the offense with which he is charged." *Id.*

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[2] One recent empirical study suggests that *pro se* representation is not always harmful to defendants, but the data are very limited, point to a (plausible) difference between misdemeanor and felony cases, and do not undermine the common-sense conclusion that, at least in felony cases and in the (fairly rare) cases involving mentally ill defendants, self-representation weakens the adversarial testing of the prosecution's case. *See* Hashimoto, *Defending the Right of Self-Representation: An Empirical Look at the* Pro Se *Felony Defendant*, 85 N.C. L. Rev. 423 (2007).

at 177 n.8. Reiterating that a defendant choosing self-representation cannot complain of self-inflicted errors, *id.*, the Court affirmed that the State may compel a substantial role for standby counsel to save the defendant from harmful errors. *Id.* at 184-85.

In *Martinez v. Court of Appeal of California*, 528 U.S. 152 (2000), the Court held that the Constitution does not provide a right to self-representation on appeal of a criminal conviction. As part of its analysis, the Court described the contours of the *Faretta* right even at trial. It observed that "the right to self-representation is not absolute" and, in addition to requiring voluntary, intelligent, and timely election, is subject to the trial court's authority to "terminate self-representation or appoint 'standby counsel'—even over the defendant's objection—if necessary" and, within limits, to permit standby counsel to "participate in the trial proceedings, even without the express consent of the defendant." 528 U.S. at 161, 162. "Even at the trial level, therefore, the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." *Id.* The Court reiterated "the overriding state interest in the fair and efficient administration of justice." *Id.* at 163.

B. There Is A Strong Public Interest In Preventing Mental Incapacities From Undermining Reliable Testing Of The Prosecution's Charges In A Contested Criminal Case

The Court has recognized the strong public interest, when criminal charges are contested, in the reliability of the adversarial process used to

adjudicate the truth of the charges. *See Jencks v. United States*, 353 U.S. 657, 671 (1957) ("'the Government which prosecutes an accused also has the duty to see that justice is done'"); *Herring v. New York*, 422 U.S. 853, 862 (1975) (a properly functioning adversary process serves "the ultimate objective that the guilty be convicted and the innocent go free"); *Lankford v. Idaho*, 500 U.S. 110, 126-27 (1991) (adversary process critical for ultimate objective of avoiding error); *Kimmelman v. Morrison*, 477 U.S. 365, 379-80 (1986); *United States v. Cronic*, 466 U.S. 648, 655-56 (1984). The reliability interest has long justified limits even on the constitutional right to present evidence, in order to prevent "confusion of the issues" or address a "potential to mislead the jury." *Holmes v. South Carolina*, 126 S. Ct. 1727, 1732 (2006); *see Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (evidentiary exclusion permissible to "serve the interests of fairness and reliability").

The independent public interest in reliable adjudication is reflected in the *Faretta* setting, where common legal experience indicates that self-representation diminishes adversarial testing of the prosecution's case and so often harms the defendant himself. *Martinez* is explicit on this score, as quoted above. Moreover, this interest underlies the *Faretta-McKaskle* recognition that a State may force standby counsel on the defendant, rather than leave the defendant wholly at the mercy of his own lack of expertise in complying with procedural and substantive law—*even though* the defendant could not later complain of self-inflicted errors. *Faretta*, 422 U.S. at 835 n.46; *McKaskle*, 465 U.S. at 177 n.8. Further, if protection of courtroom dignity and protocol are overriding interests, and the *Faretta*

right "exists in the larger context" of seeking an accurate adjudication (as *McKaskle* notes), *see* page 7, *supra*, a genuine threat to the basic reliability of the trial would seem a strong reason for overriding the *Faretta* right. *Cf. United States v. Gonzalez-Lopez*, 126 S. Ct. 2557, 2563 n.3 (2006) (right to counsel of choice "may be limited by the need for fair trial").

Serious mental illnesses present a genuine threat to the vital public interest in reliable adjudication of contested criminal charges.[3] Such illnesses are often associated with delusional misperceptions of reality, inability to think coherently, and hallucinations. *See* Amer. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition—Text Revision* 298-302,323-25 (2000) ("*DSM-IV-TR*"). The defendant may not be able to recount relevant facts (*e.g.*, where was Edwards aiming when he fired his gun?), may misunderstand courtroom developments, may fail to maintain focus during trial proceedings, and may respond irrationally. Cognitive deficiencies are commonly linked with impaired ability to formulate and to express thoughts in an understandable, coherent manner. *Id.* at 300. Severe anxiety, which is often present in psychotic disorders (*id.* at 304), can impair attentiveness and the ability to function in tense settings. Depression can make decision-making difficult or so diminish motivation as to produce self-destructive decisions. *Id.* at 349-51.

Long tradition specifically recognizes these risks and the importance of addressing them, for the

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[3] For simplicity, and given the facts of this case, we refer to and focus on mental illness, though a closely related analysis would apply to mental retardation, brain injury, and other causes of cognitive impairment.

protection of the defendant himself and of the public interest in reliable adjudication. The law governing competence to stand trial rests centrally, if not exclusively, on this basis. Thus, in *Dusky v. United States*, 362 U.S. 402, 402 (1960), the Court indicated that a defendant must have "'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding'" and "'a rational as well as factual understanding of the proceedings against him.'" In *Pate v. Robinson*, 383 U.S. 375 (1966), the Court insisted on adequate procedures to ensure competence at trial. In *Drope v. Missouri*, 420 U.S. 162 (1975), the Court summarized:

> It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.

Id. at 171. The Court noted that, while one basis for the rule might be that a defendant with sufficient mental incapacities "'is in reality afforded no opportunity to defend himself,'" it was sufficient "that the prohibition is *fundamental to an adversary system of justice*." *Id.* at 171-72 (emphasis added).

In *Riggins v. Nevada*, 504 U.S. 127, 139 (1992), Justice Kennedy agreed that "the State has a legitimate interest in attempting to restore the competence of otherwise incompetent defendants," sometimes sufficient to override an autonomy interest in refusing medication. He explained that "conviction of an incompetent defendant violates due process" and that "[c]ompetence to stand trial is rudimentary," partly because essential fair-trial rights—to counsel, to call and confront witnesses, to

testify or remain silent—depend on it. *Id.* at 139-40; *see Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996) (adopting foregoing analysis). Justice Kennedy added that due process would not even *permit* a State generally to recognize a defendant's competent *waiver* of the right to be competent at trial. 504 U.S. at 140.

This body of law reflects, at the least, the *permissibility* of a State's according overriding importance to the public interest in reliable adversarial testing of contested charges. Even the constitutional *requirement* is commonly stated in terms that flatly bar trial of a defendant who does not meet the standards for competence to stand trial. "A criminal defendant may not be tried unless he is competent." *Godinez*, 509 U.S. at 396 (citing *Pate*). "If a defendant is incompetent, due process considerations require suspension of the criminal trial until such time, if any, that the defendant regains the capacity to participate in his defense and understand the proceedings against him." *Medina v. California*, 505 U.S. 437, 448 (1992) (citing *Dusky*); *see id.* at 439.

Congress used similar terms in 18 U.S.C. § 4241(a), where it said that a trial court "shall order" a competency hearing, even on its own motion, "if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." Congress thus adopted the *Dusky* standard, and the key committee report explained that "it is mandatory that the court order a hearing" on competency if there is reasonable cause to believe that it is lacking. S. Rep. 98-225, at

234 (1983). The same committee report, mirroring *Drope*, explained that the requirement of competency to stand trial serves two functions—not just that "it is fundamentally unfair to convict an accused person, in effect, in absentia," but that

> the accuracy of the factual determination of guilt becomes suspect when the accused lacks the effective opportunity to challenge it by his active involvement at the trial.

S. Rep. 98-225, at 232.[4] Other jurisdictions likewise recognize the *governmental* interest in preventing a defendant's incapacities from making criminal trials unreliable. *E.g.*, *People v. Pokovich*, 39 Cal. 4th 1240, 1245 (2006).

This Court's decision in *Sell*, *supra*, confirms the strength of the public interest in reliable adjudication. The Court in *Sell* held that a recognized autonomy interest—in avoiding involuntary medical treatment—can be overridden in the case of mental illness where, among other preconditions, doing so is necessary for criminal charges to be brought to trial in a proceeding at which the defendant is competent. 539 U.S. at 179. The Court provided no exception to the overriding character of the public interest where a defendant makes a competent choice (say, while on medication in advance of trial) to be tried later while

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[4] Notably, "a mentally impaired defendant might be unfairly convicted if he alone has knowledge of certain facts but does not appreciate the value of such facts, or the propriety of communicating them to his counsel." N. Poythress, R. Bonnie, J. Monahan, R. Otto, S. Hoge, *Adjudicative Competence: The MacArthur Studies* 44 (2002) (internal quotation marks omitted); Bonnie, *The Competence of Criminal Defendants: A Theoretical Reformulation*, 10 Behavioral Sci. & L. 291, 295 (1992).

incompetent (by going off his medication). Even if a State is not *forbidden* to accept and proceed under such a waiver, *but cf. Riggins*, 504 U.S. at 140 (Kennedy, J., concurring) (suggesting such a prohibition), the public has an overriding independent interest in choosing to bring a criminal defendant to trial and doing so without reliability-undermining incompetence.

An analogy is helpful in considering the strength of the public interest here. If a defendant capably spoke only a language not understood by the judge, prosecutor, witnesses, or jurors—with severely limited if any English—the State would have an overriding interest in refusing to permit the defendant to conduct his own defense personally, without a translator speaking for him, even if the defendant made an informed, eyes-open choice before trial (with the assistance of a translator) to proceed at trial without any intermediary in communication, despite the predictable resulting incomprehensibility. A sufficiently severe deficiency in understanding and communication could make the trial a farce, defeating the strong public interest in a reliable trial. The present context bears an illuminating similarity: the public has a strong interest in insisting that the defendant appear through a lawyer (a kind of translator), if the defendant's mental illness produces sufficiently severe communication, understanding, or decision-making deficiencies.

It may well be possible to describe such deficiencies as rendering a defendant's choice of self-representation not intelligent or knowing, undermining the waiver of the right to counsel, on the theory that a defendant who truly appreciated his deficiencies and their consequences would not make the choice.

See Brooks v. McCaughtry, 380 F.3d 1009, 1011 (7th Cir. 2004).[5] At a minimum, though, that conclusion would be drawn from a premise already established in a logically prior analysis of the defendant's capabilities as they bear on making the trial a reliable one. In addition, the focus on the defendant's *choice* may not take full account of the State's own interest and is in any event at least conceptually distinct from that interest. Regardless, the important point is that a defendant's impaired capabilities may defeat the reliability of the adversarial-testing process if the defendant represents himself, even if a reliable trial is possible with counsel. We therefore focus directly on that point.

C. *Godinez* Did Not Decide The Present Issue

Godinez did not present or focus on the question presented here. It involved only a guilty plea, after which no trial was to take place. Capabilities required to conduct a trial were therefore not at issue. Given the context, the Court in *Godinez* focused on *waiver* of the constitutional right to obtain counsel, which it recognized was a separate matter from *entitlement* under the distinct constitutional right of self-representation. *See* 509 U.S. at 399 &

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[5] "It is one thing for a defendant to have sufficient mentation to be able to follow the trial proceedings with the aid of a lawyer, and another to be able to represent himself; and while Brooks clearly had the former, he seems equally clearly to have lacked the latter, if we may judge from his wild behavior and incomprehensible outbursts during the trial. And if he was incompetent to conduct his own defense, this is evidence that his decision to waive counsel was not 'knowing and intelligent,' as all waivers must be in order to be legally effective." *Brooks*, 380 F.3d at 1011.

n.10 ("the competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right*, not the competence to represent himself"). *Faretta* itself rested on recognizing and respecting the distinction between waiving the "essential" right to have counsel and claiming a right to proceed without counsel. 422 U.S. at 832-34.

The *Godinez* context, of course, requires that the defendant have certain competencies. The defendant must meet the *Dusky* standard of rational and factual understanding of the proceedings and be able to understand what rights he is waiving and make an intelligent choice. *See* 509 U.S. at 396-97, 401 & n.12. The defendant should also have such competence as is needed for the State to establish the factual basis for the charge to which the defendant is pleading guilty. *E.g.*, *id.* at 393; Fed. R. Crim. P. 11(b) (formerly 11(f)); *Santobello v. New York*, 404 U.S. 257, 261-62 (1971); *North Carolina v. Alford*, 400 U.S. 25, 38 (1970). If a defendant is sufficiently incompetent, his expression of acquiescence to the charges (or an earlier confession) may be both unreliable as a factual matter and not an expression of knowing, intelligent, voluntary choice. *See* Amicus Br. of American Psychiatric Ass'n *et al.*, *Godinez v. Moran*, No. 92-725 (March 5, 1993).

The situation presented in this case is importantly different from the guilty-plea situation in *Godinez*—which did not involve a claimed *Faretta* entitlement to undertake self-representation in a trial on contested criminal charges. The governmental interests differ significantly in the two situations. When the defendant pleads guilty, the charges are not being contested at all, and there is no adversarial testing.

When a defendant insists that he did not commit the crime charged, proof rather than consent must underlie any resulting conviction, and the public has a distinctive interest, given the defendant's denial, in ensuring that the adversarial testing of the proof is not made unreliable by mental incapacities. *Godinez* thus does not resolve the present case.

* * * *

For the foregoing reasons, there is a strong public interest in preventing mental incapacities from undermining the reliability of adversarial testing of contested criminal charges, an interest that may override the *Faretta* right. For the reasons elaborated next, that conclusion supports an affirmative answer to the question stated by this Court—whether a State may adopt a higher standard for self-representation than for competency to stand trial. The capabilities are relevantly different in terms of the overriding public interest.

II. SELF-REPRESENTATION INVOLVES SIGNIFICANT EXTENSIONS OF THE CAPABILITIES REQUIRED FOR COMPETENCY TO STAND TRIAL

The overriding public interest in reliable adversarial testing of contested criminal charges can justify different standards for competency to stand trial with counsel and without counsel. The different roles of the defendant in the two circumstances have different effects on the public interest at issue. And the capacities to perform the two roles are significantly different at least in degree. A State may therefore apply different "standards" and find a defendant incompetent for one purpose but not the other.

A. Mental Competency Is Not A Unitary Concept

An individual can be competent for one purpose and not another. Respect for autonomy supports the widespread legal recognition of such differences. An individual's inability responsibly to make one kind of decision, or to perform one role, is not generally reason enough to override other decisions, or entitlement to perform other roles, for which different relevant capacities are sufficiently intact.

The law widely recognizes differences in capacities. As noted above, this Court in *Godinez* observed that competency to waive a constitutional right (to counsel) was not the same as competency to represent oneself. Competency to stand trial, focusing on "'capacity to consult with counsel and to comprehend the proceedings,'" "'is by no means the same test as those which determine criminal responsibility at the time of the crime,'" even aside from the different time focus of the inquiries. *Medina*, 505 U.S. at 448. Competency to be executed involves still different concepts. *Panetti v. Quarterman*, 127 S. Ct. 2842 (2007). With respect to a litigant's competency to proceed in various kinds and stages of litigation generally, Judge Posner recently wrote for the Seventh Circuit that the determination depends, or should depend, on the particular decisions the litigant is called upon to make. *Holmes v. Buss*, 506 F.3d 576, 579 (7th Cir. 2007).

More generally, reflecting considerable professional learning, "[t]he modern trend in the law is to treat various legal competencies as independent and discrete from one another. . . . [A]djudication of incompetence for one legal purpose usually does not render a person legally incompetent in another

context." *Adjudicative Competence* at 104 (citation omitted). For example, guardianship statutes often prefer "*limited* guardianship . . . to preserve individual autonomy and self-determination wherever possible. Similarly, statutes governing involuntary hospitalization (civil commitment) often require separate determinations of competence to admit oneself for voluntary treatment and competence to make treatment decisions (e.g., to accept or refuse psychotropic medications) once in the hospital (whether admitted on a voluntary or involuntary basis)." *Id.* (footnotes omitted). In particular, research indicates that incompetence to make treatment decisions does not coincide with incompetence to stand trial. *Id.* at 109-10 (also noting that "treatment competence" has been found "a poor proxy for capacity for voluntary admission to psychiatric treatment").

Legal standards thus recognize that "[n]o single legal criterion or test applies across all legal competencies. Each legal competence refers to somewhat different abilities related to various ordinary or extraordinary situations in the lives of defendants, patients, children and the elderly, or persons with no particular legal, developmental, or psychiatric status. The law, therefore, does not presume that legal incompetence in any of these areas renders an individual incompetent in any other area of legal competence." T. Grisso, *Evaluating Competencies: Forensic Assessments and Instruments* 9 (2d ed. 2003); *see* T. Grisso & P. Appelbaum, *Assessing Competence to Consent to Treatment: A Guide for Physicians and Other Health Professionals* 21 (1998). And that recognition reflects an extensive professional literature that accords separate treatment to the wide range of competencies—which, moreover,

"may change or fluctuate" over time for a particular individual (*id.* at 26)—that are regularly subject to legal inquiry.[6]

B. Self-Representation Requires More Extensive Capabilities Than Those Needed To Stand Trial

Greater capabilities are generally required to play the role of lawyer than of represented defendant. A defendant may, of course, either have or lack relevant capabilities for both purposes. But a *pro se* defendant is generally called on to do significantly more than a represented defendant. "The *pro se* defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in voir dire, to question witnesses, and to address the court and the jury at appropriate points in the trial." *McKaskle*, 465 U.S. at 174. The relevant abilities—judged by whether reliable adversarial testing of the prosecution's case is unduly threatened—are commensurately greater.

1. The courts throughout the Nation widely follow the *Dusky*-based requirements for competency to stand trial, without demanding more. *See* Mossman *et al.*, *AAPL Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial*, 35 J. Amer. Acad. Psychiatry & L. No. 4 Suppl. S59-S67 (2007) (table surveying state and federal

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[6] *See, e.g.*, Grisso at 69-460 (competence topics: standing trial; waiving rights to remain silent and to obtain counsel; insanity; parenting; guardianship and conservatorship; consent to treatment); G. Melton, J. Petrila, N. Poythress, & C. Slobogin, *Psychological Evaluations for the Courts: A Handbook for Mental Health Professionals and Lawyers* (3d ed. 2007) (similar); *Adjudicative Competence*, *supra*.

statutes).[7] The prevailing approach requires both certain decision-making capabilities and certain cognitive/communication capabilities.[8]

Thus, the defendant must have the capacity to decide whether to waive certain rights: the right to trial (*Godinez*, 509 U.S. at 391); the right not to testify (*Rock v. Arkansas*, 483 U.S. 44, 52-53 (1987); the right to a jury (*Adams v. United States ex rel. McCann*, 317 U.S. 269, 275 (1942)). *See* Bonnie at 296; *Cooper*, 517 U.S. at 364. He may also need the capacity, "in consultation with counsel," to decide "whether to waive his 'right to confront [his] accusers.'" *Id.*; *see id.* ("With the assistance of counsel, the defendant also is called upon to make myriad smaller decisions concerning the course of his defense."). Moreover, at least as a matter of legal ethics, lower courts now widely hold, where the defendant is competent to make the relevant decision, "that defense attorneys are obligated to adhere to client wishes on basic issues relating to defense or disposition of the case, including" whether to raise the insanity defense, although such wishes may often not be solicited from or expressed by the defendant in practice. *Adjudicative Competence* at 34-35; *see id.* at 26; Bonnie at 296.

Certain cognitive/communication abilities are required indirectly in order to make the decisions

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[7] The interest in bringing charges to trial is thus broadly treated as strong enough to warrant keeping the standard for compentency to stand trial at or near the constitutional minimum.

[8] It is useful to group cognitive and communication capabilities together, for present purposes. It is *communicated* thoughts that generally matter for a defendant's role, whether the defendant is represented or proceeding *pro se*.

committed to the defendant.[9] Moreover, certain cognitive/communicative abilities are directly required by the basic *Dusky* demand for competence *to assist counsel*. The defendant must have "the capacity to (1) understand the charges and the basic elements of the adversary system (understanding), (2) appreciate one's situation as a defendant in a criminal prosecution (appreciation), and (3) relate pertinent information to counsel concerning the facts of the case (reasoning)." *Adjudicative Competence* at 46-47; *see* Bonnie at 297. These cognitive/communication abilities are limited to what is needed to provide enough information to counsel so that counsel, not the defendant, can carry out the many tasks required to assure reliable adversarial testing of the prosecution's case.

2. When a defendant plays the role of lawyer, the defendant himself must have the wider range of decision-making and cognitive/communication capabilities that ordinarily only counsel need have. He must be able to sustain such capabilities, and the focus and concentration they require, while playing an active role over the course of a high-pressure trial.

A *pro se* defendant must make many more decisions—including the many decisions generally committed to counsel in a normal case. Common decisions, reflected in the above-quoted *McKaskle* summary, include what motions to make before or at

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[9] Such decision-making has been said to require the capacity to "(1) understand information relevant to the specific decision at issue (understanding), (2) appreciate the significance of the decisions as applied to one's own situation (appreciation), (3) think rationally (logically) about the alternative courses of action (reasoning), and (4) express a choice among alternatives (choice)." *Adjudicative Competence* at 48; *see* Grisso & Appelbaum at 31.

trial (for suppression of evidence or otherwise); what questions to ask in voir dire; what to say in opening; whether to object to prosecution questions or statements; what questions to ask in cross-examining the prosecution's witnesses; what witnesses to call and what questions to ask of them; what to say in closing.[10] And many of these decisions must be made quickly, without much if any advance warning or chance to prepare, in a public courtroom, under the pressure of knowing that the consequences may be irreversible and the prosecution ready to exploit errors.

A *pro se* defendant not only must make this wider range of decisions, but must have the significantly greater cognition/communication capabilities required to play the roles that executing such decisions entails. To begin with, unless standby counsel shoulders the load of motions and other paper submissions (*see* page 34, *infra*), a *pro se* defendant requires written-communication abilities: he must be able to get a point across and to stay focused on relevant points. Questions about such capabilities in this case (and, indirectly, about oral-communication and basic cognitive abilities) are raised by Edwards' extensive written communications to the trial court,

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[10] Counsel generally makes decisions, in consultation with the defendant where feasible, on "what witnesses to call, whether and how to conduct cross-examination, what jurors to accept or strike, what trial motions should be made, and what evidence should be introduced." ABA Standards for Criminal Justice § 4-5.2(b) (3d ed. 1993); *see* Poulin, *Strengthening the Criminal Defendant's Right to Counsel*, 28 Cardozo L. Rev. 1213, 1236, 1239 (2006) ("courts hold that counsel controls all but a few decisions," including "what motions to file, what witnesses to call, what objections to raise and what arguments to make").

including on topics unrelated to the criminal charges. *See, e.g.*, Pet. Br. 11-13.

Much more pervasive is the need for oral communication capabilities—in the public, pressured setting of the trial courtroom (rather than in quiet private conversations with counsel). The *pro se* defendant's speaking role commonly includes voir dire, opening argument, objections, cross-examination of prosecution witnesses, direct (and re-direct) examination of defense witnesses, and closing argument. Cognitive or communication deficiencies can severely impair the essential functions of getting legitimate points across at all those stages. The abilities to understand and articulate the exact elements of the crimes charged and sound objections to admission of prosecution evidence (which may be unreliable or irrelevant or prejudicial); to define and then pursue lines of cross-examination that show genuine weaknesses or gaps in particular prosecution witnesses' testimony; to see difficulties in the prosecution's evidence and then ask the right questions of defense witnesses to identify such difficulties and to present contrary evidence; to grasp what is important to highlight, throughout trial and in closing, and then to speak so that the essential points are actually conveyed and are not lost among other details—these are abilities a *pro se* defendant must have that go well beyond those required of a represented defendant.

Not only does a *pro se* defendant have more to say than a represented defendant, and in a different setting, but there is an important difference in the audience. A represented defendant must be able to "relate pertinent information *to counsel* concerning the facts" (*Adjudicative Competence* at 46 (emphasis

added)), and counsel is under a professional obligation to listen sympathetically and patiently, to ask questions to elicit and clarify statements, to *help* the defendant communicate. A *pro se* defendant speaking in the courtroom has additional, quite different audiences: the judge (wanting to move things along, given the likely burdens of a busy docket and the imposition on citizens as jurors); witnesses who may be impatient, nervous, in need of focusing, uncooperative, or hostile; jurors with no obligation to be sympathetic and already doing a public service that interrupts their normal lives; and prosecutors ready to exploit deficiencies, given their unavoidable adversarial posture even with all possible good faith. The capacity for coherent communication before such audiences may well be lacking even for a defendant who can communicate coherently with his own lawyer.

A *pro se* defendant with sufficiently impaired cognitive or communication capabilities also may affirmatively, but unreliably, harm his own case. When speaking, over and over, in the role of lawyer, he will almost inevitably be giving "testimony" (in the eyes of the jury), and he may unwittingly contradict himself or make unreliable admissions through statements whose meaning he does not truly appreciate, whether because of cognitive or communication deficiencies. Such harmful "testimony" may, however, be distinctly unreliable because of mental illness. The greater the opportunities for the defendant to speak, the greater is that risk. Yet it may be difficult for the judge, or the prosecutor, to control the jury's drawing of improper inferences from such "testimony."

In short, self-representation involves a substantially expanded role for the defendant and hence

requires significantly greater capabilities than those required for a sound trial of charges against a represented defendant. Disorganized thinking, deficits in sustaining attention and concentration, impaired expressive abilities, anxiety, and other common symptoms of severe mental illnesses can impair the defendant's ability to play the significantly expanded role required for self-representation even if he can play the lesser role of represented defendant.

C. The Required Capabilities Are Extensions Of The Capabilities That Are Routinely And Soundly Assessed In Judging Competency To Stand Trial

The legal relevance of particular capabilities (in any context) is a matter for legal decision-makers, not mental-health professionals, to determine—including, here and in determining competency to stand trial itself, by deciding when the reliability of adjudication is unduly threatened. *See* Grisso at 15; Melton at 135. Even for mental-health professionals, moreover, assessing capacities requires judgments specific to the individual and relevant circumstances, not just running through a checklist or toting up a score. *See Adjudicative Competence* at 41; Grisso at 22-23. Further, while there is a considerable professional literature on techniques for assessing the competency to stand trial and all sorts of other competencies (*see* note 6, *supra*), no comparable professional attention has focused on the relatively rare phenomenon of mentally ill defendants asserting *Faretta* rights.

Nevertheless, the underlying capabilities relevant to self-representation are, in general, subject to

sound professional evaluation. Indeed, the needed assessments are generally extensions of assessments already embraced within the inquiries typically made for assessing competency to stand trial. The latter assessments, after intense scrutiny, have been characterized as having "high reliability and validity." Melton at 144; *id.* at 145. Evaluations of the related, but significantly extended, capabilities bearing on self-representation should be sound as well.

1. The methods for evaluating competency to stand trial have been described several places, *e.g.*, *id.* at 157-64, including in the recently issued *AAPL Guideline*, *supra*. Evaluations involve reviewing relevant background information, including both medical records and court records; interviewing the defendant, using a number of structured approaches to questioning; and, sometimes, employing "assessment instruments" and conducting further interviews, such as with the defendant's attorney. *AAPL Guideline* at S31-S43. A psychiatric diagnosis is a standard part of the process, as such a diagnosis is highly relevant though by no means dispositive. *Id.* at S32.[11] "The goal is to learn whether and how mental symptoms impair competence-related abilities," bearing in mind that "[t]he relevance of even severe symptoms to the question of competence varies from case to case." *Id.* at S32.

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[11] Incompetency to stand trial is commonly associated with diagnoses of serious psychotic disorders or symptoms. *Id.* at S44; *see Adjudicative Competence* at 91-92, 98 ("psychotic symptoms regardless of diagnosis," such as conceptual disorganization and unusual thoughts, "and a diagnosis of schizophrenia more so than other diagnoses[,] are significantly associated with impaired competence"); Melton at 144; Grisso at 12, 24.

The interview of the defendant is at the center of this process. The interviewer elicits personal and family background information; systematically examines current mental status and abilities (*e.g.*, relating to delusions, memory, information processing, concentration, perception, reasoning, elementary knowledge, mood); explores the defendant's understanding of and ability to grasp and reason about the criminal charges, evidence, and process that he faces and the options he has available; and (commonly) asks the defendant to recount his version of the facts—or reasons for refusing to do so (*e.g.*, advice of counsel)—and how he understands witnesses, victims, and the police will view the facts. *Id.* at S32-S36. Sometimes, but by no means always, administration of conventional psychological tests (*e.g.*, for intelligence or personality) is useful, especially if there is a question of neuropsychological impairment or mental retardation or malingering. *Id.* at S36-S37.

"Over the past four decades several instruments for assessing adjudicative competence have been developed, including structured interviews with standardized instructions for scoring and interpreting a defendant's responses." *Id.* at S37. These instruments have strengths and weaknesses, and they are not designed to decide the competency question, but to supply "one source of information," requiring interpretation "in light of the full clinical interview and other available data." *Id.* at S37. Among the instruments are the Competency to Stand Trial Screening Test (CST) and related Competency to Stand Trial Assessment (CAI), the widely used Georgia Court Competency Test (GCCT) and its modification by the Mississippi State Hospital (GCCT-MSH), the Interdisciplinary Fitness Interview (IFI) and IFI-Revised (IFI-R), and the Computer-

Assisted Determination of Competency to Stand Trial (CADCOMP). *Id.* at S39-S41. Starting in 1989, the MacArthur Research Network on Mental Health and the Law undertook extensive studies on competency issues and ultimately developed the MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA). *Id.* at S42-43; *see* Melton at 150 (table showing MacCAT-CA structure).[12] And 2005 saw release of a new comprehensive-assessment instrument, the Evaluation of Competency to Stand Trial-Revised (ECST-R). *AAPL Guidelines* at S43. *See generally* Grisso at 89-139 (reviewing "forensic assessment instruments"); Melton at 145-54 (similar).

2. The capabilities for decision-making and thinking and expression relevant to proceeding *pro se*, as described above, are extensions of capabilities that already are the subject of inquiry—though with a more limited focus—in assessments of competency to stand trial (and other competency inquiries, for that matter). Thus, the diagnostic component of the inquiry commonly addresses both disorganization of thought and impaired "expressive capacities" in determining whether the defendant has a "[m]ajor mental disorder," a "commonly recognized legal bas[i]s for incompetence to proceed to adjudication." *Adjudicative Competence* at 62; *see* note 11, *supra*. Indeed, "clinical judgments of incompetency have been closely associated with particular symptoms–most prominently symptoms of thought disorder, delusional beliefs, paranoia, disorientation, and hallucinations." Melton at 144.

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[12] *Adjudicative Competence*, *supra*, is one important result of this extended project. Another part of the project led to analyses of and tools for assessing competency to make treatment decisions. *See* Grisso at 391-460; Grisso & Appelbaum, *supra*.

Capabilities to make decisions are directly explored in assessments of competency to stand trial. Such assessments attempt "to discern a defendant's capacity to make relevant decisions in a self-interested manner, or to uncover delusional thoughts or other symptoms of mental disorder that impair the capacity to evaluate rationally the choice that one may face." *Adjudicative Competence* at 67. Cognitive and communication capabilities are also directly explored in assessing competency to stand trial. Examiners assess the ability to think clearly and to relate information (*id.* at 46, 63, 100; *see* Melton at 150; Grisso at 84) and look for "faulty reasoning secondary to irrational (delusional) beliefs" (*Adjudicative Competence* at 136). Closely related inquiries into the ability to reason coherently and make decisions—though with a much smaller role for communicative abilities—are a mainstay of other competency inquiries, *e.g.*, into competency to consent to treatment. *See* Grisso at 394-460; Grisso & Appelbaum at 31-60.

3. Inquiries along these lines were made by the professionals who examined Edwards. Their examinations focused entirely on assessing whether Edwards had the capabilities required to stand trial while represented; they never focused on the additional specific capabilities required for self-representation. *Amici* do not address what consequences that fact should have for the proper disposition of this case.

The examination reports display some of the familiar structured techniques for assessing various capabilities. JA 17a-39a, 56a-64a, 84a-90a, 157a-65a, 186a-96a, 212a-36a. They contain diagnoses of schizophrenia or delusional disorder (*see* page 1, *supra*), which are characterized by cognitive defi-

ciencies and sometimes disorganized communication. *DSM-IV-TR* at 298-302, 323-25. They repeatedly show direct inquiry into certain cognitive and communication abilities. And they reflect the familiar facts that an individual with significant mental illness can vary markedly in functioning from day to day, particularly if unmedicated, and even in a single conversation can start off functioning well but deteriorate rapidly after a short time, particularly if challenged.

In February 2000, Dr. Trexler reported that Edwards "appears to be consistently confused"; "he is quite tangential, expansive, and disorganized in his verbal output"; he "starts off with some structure, but then quickly decompensates"; and he "has written extensive and disorganized letters to a variety of people which are delusional in nature and as previously diagnosed certainly grandiose." JA 28a, 30a. He was given a battery of psychological tests. JA 34a-36a.

In March 2001, Dr. Berger reported that Edwards "appears able to think clearly" and "to carry on a normal conversation and answer questions appropriately." JA 61a-62a. In October 2001, Dr. Masbaum reported that Edwards' "speech was not disorganized," and he lacked delusions and hallucinations. JA 87a.[13] In November 2002, Dr. Coons reported that Edwards' "thought process is markedly impaired with loose associations, illogic, irrelevance, and marked incoherence," with a "grandiose delusional system,"

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[13] Earlier, Dr. Masbaum had reported that Edwards "was loquacious providing rambling intellectual responses to questions" and "when questions of clarification or specifics were asked he avoid[ed] providing the requested information." JA 20a.

which his writings exemplify. JA 164a. In December 2002, Dr. Masbaum reported that Edwards "had no disorganized speech" or hallucinations. JA 194a-95a.

Later in December 2002, Dr. Schuster reported that Edwards was "alert, coherent and cooperative" and "spoke easily and in great detail," without "unusual verbalizations." JA 187a. Dr. Schuster's "observations of . . . his ability to communicate and verbalize his thoughts and feelings did not suggest any gross impairment of his nervous system." JA 188a. Dr. Schuster found "no indication of delusional ideation or psychotic thinking." JA 189a.[14]

In June 2004, Dr. Sena reported that Edwards was "manifesting psychotic symptoms of hallucinations and disorganized thought processes." JA 216a. Edwards' speech, though "easy to hear and understand," revealed "disorganized thought processes of a mild to low-moderate degree," and he was "talkative, and will elaborate extensively (if permitted to do so) when answering questions, becoming circumstantial and tangential." JA 218a-19a. "[D]ue to his present impairments of disorganized thought processes, delusional ideation, and bothersome hallucinations, his ability to discuss important and necessary matters with his attorney, and to remain focused on those matters, will likely be compromised to a significant degree." JA 221a. Those impairments also affected his likely ability to testify or to challenge prosecution witnesses. JA 222a-23a. *See also* JA 224a ("disorganized thought processes . . . impair his ability to communicate verbally").

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[14] Earlier, Dr. Schuster had reported that Edwards had grandiose delusions ("of inflated worth, power and knowledge"), which "may make it difficult . . . to communicate satisfactorily with his attorney." JA 26a

Late in July 2004, Dr. Sena opined that Edwards was competent to stand trial. He reported that Edwards' "thought processes are no longer disorganized" (JA 231a), but are now "coherent" (JA 232a), with no evident hallucinations or delusions (*id.*). Edwards "acknowledges his need for counsel" and could "plan a legal strategy . . . in cooperation with his attorney." JA232-33a (capitalization removed). "He is demonstrating the abilities necessary to assist his attorney in his own defense, including good communication skills, cooperative attitude, average intelligence, and good cognitive functioning." JA 235a.

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In short, inquiries into decision-making and cognitive/communication capabilities are already part of the reliable assessment of competency to stand trial. Such inquiries, however, must be specific to the tasks involved, and those tasks are substantially expanded for a *pro se* defendant. What is required in this context, therefore, is a significant extension of inquiries already being made (albeit with a narrower focus) for the threshold assessment of competency to stand trial.

III. THE AVAILABILITY OF STANDBY COUNSEL AND THE POSSIBILITY OF COMPETENCY RESTORATION ARE RELEVANT TO JUSTIFYING AN OVERRIDE OF THE *FARETTA* RIGHT

This Court's question does not call for elaboration of precisely when a State may permissibly conduct a trial with unwanted counsel representing the defendant. But if, as argued above, a State may justify application of a higher standard for self-

representation than for competency to stand trial, respect for the *Faretta* right suggests two aspects of the inquiry into whether a State has justified denial of self-representation in a particular case.

First, the inquiry should take into account the availability of standby counsel to advise and assist a self-representing defendant. *Faretta, McKaskle*, and *Martinez* all make clear that a State *may* supply standby counsel to aid the defendant. If a State makes standby counsel available, the role that will be played by such counsel may diminish at least the decision-making demands placed on the self-representing defendant. On the other hand, a choice to undertake self-representation does not generally carry a right to have counsel divide the in-court tasks; the defendant must carry the main load. *McKaskle*, 465 U.S. at 183 ("*Faretta* does not require a trial judge to permit 'hybrid' representation of the type Wiggins was actually allowed."). And in any event standby counsel must broadly respect the defendant's choices about limiting his role. *Id.* at 188.

Given the limits on standby counsel, the ultimate assessment of competency for self-representation may generally be unaltered by the availability of standby counsel. As a logical matter, though, a court deciding whether to deny self-representation for competency reasons should be deciding whether the defendant is competent to represent himself with standby counsel playing the role expected and permitted by law and the defendant.

Second, if a court finds a defendant incompetent to proceed *pro se*, the court must decide what to do. The answer logically should involve consideration of whether available treatment would likely render the defendant competent to represent himself and

whether the needed delay of proceedings would be prejudicial or warranted. At least theoretically, a short, non-prejudicial delay for treatment that promises to work may enable the defendant to represent himself competently, thereby eliminating the justification for overriding the *Faretta* right.[15]

We do not suggest here what standard should apply to such considerations. How to evaluate that possibility and a State's obligation to consider it would benefit from focused consideration after presentation of evidence on the matter in a concrete case, perhaps even on a remand in this case.

CONCLUSION

This Court should give an affirmative answer to the question presented.

Respectfully submitted,

RICHARD G. TARANTO
(Counsel of Record)
FARR & TARANTO
1220 19th Street, NW
Suite 800
Washington, DC 20036
(202) 775-0184

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[15] In the context of competency to stand trial, "research on competence restoration shows that most individuals referred for treatment after being found incompetent do in fact become competent to stand trial," usually following treatment with anti-psychotic medication. *AAPL Guideline* at S47; *see* Melton at 162-63. No comparable body of research focuses on the much smaller group of mentally ill defendants that assert *Faretta* rights, but anti-psychotic medications often eliminate the kinds of cognitive and communication incapacities that bear on self-representation capacity. Likely restorability ultimately requires a clinical, case-specific judgment.

AMICUS CURIAE BRIEF

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FOR ARGUMENT

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No. 07-208

IN THE

Supreme Court of the United States

STATE OF INDIANA,

Petitioner,

vs.

AHMAD EDWARDS,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of Indiana

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

KENT S. SCHEIDEGGER
Criminal Justice Legal Fdn.
2131 L Street
Sacramento, CA 95816
(916) 446-0345

Attorney for Amicus Curiae
Criminal Justice Legal Foundation

QUESTION PRESENTED

May States adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial?

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IN THE

Supreme Court of the United States

STATE OF INDIANA,

Petitioner,

vs.

AHMAD EDWARDS,

Respondent.

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a nonprofit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the constitutional protection of the accused into balance with the rights of the victim and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

This case presents the difficult question of how to handle motions for self-representation made by defend-

---

1. The parties have consented to the filing of this brief.

No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* CJLF made a monetary contribution to its preparation or submission.

ants of borderline mental competence. The Indiana Supreme Court held that the *minimum* standard of competency at which the trial judge *may* grant the motion is also the standard for deciding when the judge *must* grant the motion. This rule places the trial judge on a constitutional tightrope where an appellate court may find reversible error whichever way the judge rules.

Given the uncertainties inherent in mental evaluations, there should be a range where the trial judge has discretion to allow or not allow self-representation and either ruling will be upheld. Such a rule would promote the fairness and efficiency of trials that CJLF was formed to protect.

SUMMARY OF FACTS AND CASE

On July 12, 1999, Ahmad Edwards stole a pair of shoes from a department store in downtown Indianapolis. App. to Pet. for Cert. 17a-18a. An unarmed store loss prevention officer attempted to detain him. *Id.*, at 18a. Edwards then pulled out a gun and fired three shots, of which one hit the officer and one hit a bystander. *Ibid.*

An FBI agent who happened to be driving by the store apprehended Edwards. *Id.*, at 18a-19a. Three days later, Edwards was charged with attempted murder, felony battery with a deadly weapon, criminal recklessness, and theft. *Id.*, at 19a.

The trial court found Edwards incompetent to stand trial. *Id.*, at 2a. He was committed to a state hospital for evaluation and treatment. Pet. for Cert. 5. In 2001, the hospital notified the trial court that Edwards "has attained the ability to understand the proceedings against him and assist in the preparation of his de-

fense." *Ibid.* After further court-ordered psychiatric testing, a psychiatrist found "that Edwards still suffered from a delusional disorder, but understood the charges against him and could aid counsel in his defense." *Id.*, at 6. Trial was set for December 2002. *Ibid.*

In November 2002, a psychiatrist chosen by defense counsel opined that Edwards was unable to assist with his defense due to schizophrenic delusions. *Ibid.* Trial was delayed, and a year later, Edwards was again found to be incompetent to stand trial. *Id.*, at 7. For six months, Edwards received treatment for "symptoms of disorganized thought processes, delusional ideation, hallucinations, and ideas of reference."[2] *Ibid.* On July 29, 2004, based on an evaluation that he had "greatly improved" and "no longer has hallucinations, delusions, and ideas of reference," Edwards was again certified as competent to stand trial. *Ibid.*

Prior to this trial, Edwards asked the court to proceed *pro se*. *Id.*, at 8. The trial court denied Edwards' request because Edwards had expressed an intent to present an insanity defense and the "request would have caused a continuance . . . ." J. A. 524a. Edwards was tried and convicted of theft and criminal recklessness, but the jury hung on the charges of attempted murder and felony battery. App. to Pet. for Cert. 3a. A mistrial was declared, and a second trial was ordered on the counts of attempted murder and felony battery with a deadly weapon. *Ibid.*

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2. "Ideas of reference" refers to "[a] pattern of beliefs that external events have a special significance for the person." A. Colman, Oxford Dictionary of Psychology 352 (paperback ed. 2003). For example, a person who believes that a television newscaster is speaking directly to him is said to have "ideas of reference." See Noffsinger & Saleh, Letter, Ideas of Reference About Newscasters, 51 Psychiatric Services 679 (2000).

Before the second trial could commence, Edwards made a motion to proceed *pro se*. *Ibid.* The trial court denied this motion, relying on the psychiatrist reports that found Edwards still suffered from schizophrenia and delusional disorders, and referred to Edwards rambling writings as indicative of his inability to stay focused. *Id.*, at 3a; J. A. 526a-527a. "With these findings, he's competent to stand trial but I'm not going to find he's competent to defend himself." J. A. 527a.

Edwards' second trial resulted in a conviction for attempted murder and battery with a deadly weapon. *Id.*, at 3a. Edwards appealed, claiming his Sixth Amendment right to self-representation had been denied at the second trial. *Ibid.* The Court of Appeals of Indiana agreed and reversed Edwards' conviction with instructions to retry Edwards for attempted murder and battery. *Ibid.*

The Indiana Supreme Court granted discretionary review. *Id.*, at 3a. Despite the trial judge's finding "that Edwards was incapable of adequate self-representation," the court found this Court's precedent bound it to hold that "because Edwards was found competent to stand trial he had a constitutional right to proceed pro se and it was reversible error to deny him that right on the ground that he was incapable of presenting his own defense." *Id.*, at 14a.

This Court granted certiorari.

SUMMARY OF ARGUMENT

The Sixth Amendment right to self-representation recognized by this Court in *Faretta* was grounded in a consensus of court decisions and state policies that implied a right to self-representation. This consensus did not support the conclusion that the right to self-

representation was absolute and trumped all other considerations. Many courts had held that this right could be limited when necessary to protect the fairness of the trial and courtroom order. The consensus on which *Faretta* was based should mark the boundary of the constitutional rule, and it does not mandate granting self-representation every time a marginally competent defendant knowingly waives his right to counsel.

Rights that are implicit in the Constitution are not absolute, and they may yield in some cases to other essential interests. This Court's decisions in *Illinois v. Allen* and *Sell v. United States* illustrate that at times the "dignity, order, and decorum" of a criminal trial proceeding require that a criminal defendant's constitutional right be limited. Similarly, the Constitution permits States to place limits on self-representation when the evidence before a trial judge demonstrates the defendant's behavior may frustrate the fair administration of justice.

Fair administration of justice is the ultimate goal of the criminal justice system. Fairness can best be achieved by allowing courts to decide that while a defendant is competent to waive counsel, he may not have a right to represent himself if doing so would be contrary to the State's own interest in a fair and orderly trial. *Godinez* v. *Moran* set the floor on when a State *may* allow a defendant to waive counsel, but it did not establish the ceiling at which the State *must* allow self-representation. Instead, *Godinez* left room for States to develop "more elaborate" standards if they so choose.

ARGUMENT

I. The scope of the *Faretta* right should be limited to the scope of the consensus on which it was based.

A. The Faretta Consensus.

"There are some individuals who, by reason of age, ignorance or mental capacity, are incapable of representing themselves adequately in a prosecution of a relatively simple nature." *Wade* v. *Mayo*, 334 U. S. 672, 684 (1948). This has long been understood, and *Faretta* v. *California*, 422 U. S. 806 (1975), did not change this understanding. Instead, *Faretta* found a national "consensus" implying a Sixth Amendment right of self-representation. See *id.*, at 817-818. The right, although not expressed within the text of the Amendment, was found to be part of the "fundamental nature" of the Sixth Amendment because "forcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so." *Id.*, at 817.

However, *Faretta* did not resolve whether a defendant's right to elect self-representation extended to every case where a defendant validly waived the right to counsel. The right to counsel and the right to self-representation are distinct, and *Faretta* rejected the notion that one arises from the other. "We do not suggest that this right arises mechanically from a defendant's power to waive the right to assistance of counsel. See *supra*, at 814-815. On the contrary, the right must be independently found in the structure and history of the constitutional text." *Id.*, at 820, n. 15 (citations omitted). Therefore, when the Court stated that to choose self-representation, and relinquish the benefits of counsel, a defendant must "competently and intelligently" choose self-representation, and the record must establish "that 'he knows what he is doing and his

choice is made with eyes open,' " *id.*, at 835 (quoting *Adams* v. *United States ex rel. McCann*, 317 U. S. 269, 279 (1942)), the Court did not establish that the right to proceed *pro se* arose concurrently with the determination that a defendant had validly waived counsel. *Martinez* v. *Court of Appeal of Cal., Fourth Appellate Dist.*, 528 U. S. 152, 161 (2000), noted that under *Faretta* "the right to self-representation is not absolute." Also, "the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." *Id.*, at 162.

Instead, the *Faretta* Court established a right to proceed *pro se* without defining what level of mental functioning a defendant needed to have before a state court must allow him to do so. The Court noted that Faretta was literate, competent, and understanding, and that he was voluntarily exercising his informed free will. See *Faretta*, 422 U. S., at 835. The problem of the marginally competent defendant was not before the Court. There were, however, pre-*Faretta* cases that distinguished between a defendant's ability to waive counsel and his ability to represent himself.

The *Faretta* right to self-representation was premised on the Court's finding of a "consensus" among federal and state courts which "accords a defendant the right to represent himself in any criminal case." *Id.*, at 813, 817. The cases that made up this consensus are therefore worth a close look. Footnote 9 in the *Faretta* opinion cites 16 state cases and 2 secondary authorities for the proposition that nearly all states recognized a right of self-representation. A survey of the legal landscape, cf. *Graham* v. *Collins*, 506 U. S. 461, 468 (1993), to determine the extent of this commonly recognized right requires a look at the authorities cited

by the *Faretta* Court as well as other cases cited and discussed in those authorities.

Many of the cases cited by *Faretta* contain no more than a passing reference to a right of self-representation on the way to a holding that a defendant's waiver of counsel was valid. See, *e.g.*, *Mackreth* v. *Wilson*, 31 Ala. App. 191, 193, 15 So. 2d 112, 113 (1943). Such references tell us little about the scope of the right. A more extended discussion can be found in *Cappetta* v. *State*, 204 So. 2d 913 (Fla. App. 1967), rev'd on other grounds, 216 So. 2d 749 (Fla. 1968), a case in which the trial court denied the motion for self-representation. *Cappetta* notes the split of authority regarding whether there are limitations on a defendant's right to proceed *pro se* where it is invoked prior to the start of trial.

> "Using the principles obtained from the above cited cases, this court holds to the general rule that in the absence of unusual circumstances an accused who is mentally competent and sui juris has the right to conduct his own defense without the aid of counsel.[1]
>
> "To invoke this right the criminal defendant must make an unequivocal request to act as his own lawyer. Such request must be made prior to the commencement of the trial. The defendant having complied with these requirements, the trial judge must then determine if the defendant has intelligently and competently waived his right to counsel *and that no unusual circumstances exist* which would preclude the defendant from representing himself without assistance of counsel.
>
> * * *
>
> "In determining *unusual circumstances, included* but not limited thereto is whether *the accused by reason of age, mental derangement*, lack of

knowledge, or education, or inexperience in criminal procedures *would be deprived of a fair trial if allowed to conduct his own defense*, or in any case, where the complexity of the crime was such that in the interest of justice legal representation was necessary. The right of an accused to represent himself without assistance of counsel is *not so absolute* that it must be recognized when to do so would jeopardize a fair trial on the issues.

"The determination of whether unusual circumstances are evident is a matter resting in *the sound discretion granted to the trial judge* in conducting the trial in a cause and will not be disturbed unless an abuse is shown. *Ellard* v. *Godwin*, Fla. 1955, 77 So. 2d 617.

"1. For an excellent annotation dealing with this subject, see 77 A. L. R. 2d 1233. Also see 21 Am. Jur. 2d, Criminal Law, § 310, and 23 C. J. S. Criminal Law § 979(4)." *Id.*, at 917 (emphasis added).

Significantly, *Cappetta* recognizes that both a valid waiver *and* absence of unusual circumstances are required. Further, the defendant's mental abilities are among the factors considered under "unusual circumstances." Finally, the appellate court recognized that a range of discretion for the trial judge is necessary. The court logically recognized there may be defendants whose mental state would allow the trial judge to deny self-representation even though they are able to make a valid waiver of their right to counsel.

Faretta also cited *State* v. *Woodall*, 5 Wn. App. 901, 491 P. 2d 680 (1971). That case held, "Whether a defendant should be allowed to act as his own counsel lies within the sound discretion of the trial judge." *Id.*,

at 903, 491 P. 2d, at 682. The defendant's mental capacity was central to the exercise of that discretion. Distinguishing an earlier case, the court held that Woodall was "mentally competent, alert and capable of framing questions in an intelligent manner" and therefore properly allowed to represent himself. *Id.*, at 904, 491 P. 2d, at 682.

Faretta, *Cappetta*, and *Woodall* all cite Annot., Right of Defendant to Conduct Defense in Person, or to Participate with Counsel, 77 A. L. R. 2d 1233 (1961). That annotation notes cases holding that some discretion is allowed to the trial court in order to maintain order and insure a fair trial. See *id.*, at 1239. Among the cases cited is *People* v. *Burson*, 11 Ill. 2d 360, 143 N. E. 2d 239 (1957), where the Illinois Supreme Court explains the limitations on the right of self-representation under Illinois law.

> "If then sane [at the time of trial], the defendant, upon the waiver of counsel, had the right to defend himself, *subject to the constant duty of the court to protect the judicial process from deterioration* occasioned by improper or inadequate conduct of the defense. In such situation the court possesses *broad discretion* in relation to the appointment of counsel for advisory or other limited purposes, or *to supersede the defendant* in the conduct of the defense. Continuous supervision of the trial is required in order to maintain proper judicial decorum, to the end that defendant may receive a fair trial." *Id.*, at 373, 143 N. E. 2d, at 247 (emphasis added).

Illinois is one of the states cited by *Faretta* for the consensus. See 422 U. S., at 813, n. 9. The consensus was not for an absolute right whenever the defendant was competent to waive counsel but rather for a right subject to limitation when needed to protect the judicial process.

The "consensus" footnote of *Faretta* also cites R. Anderson, Wharton's Criminal Law and Procedure § 2016 (1957). The 1974 supplement to that work, the one current at the time of *Faretta*, states at page 100, "Thus the court may appoint counsel for the defendant when the mental deficiency or ignorance of the defendant makes it clear that he will not be able to conduct his own defense adequately and the punishment for his offense is severe." Among the cases cited for this proposition are *McCann* v. *Maxwell*, 174 Ohio St. 282, 189 N. E. 2d 143 (1963), and *United States* v. *Davis*, 260 F. Supp. 1009 (ED Tenn. 1966).

In *Davis*, defendant moved for a new trial claiming the trial court erred in denying him the right to conduct his own defense and in forcing him to be represented by court-appointed counsel. 260 F. Supp., at 1011. Davis had been tried for bank robbery and kidnapping and had been appointed counsel at his request. *Id.*, at 1017. Shortly after this appointment, Davis was found incapable of assisting counsel in his defense and was committed for treatment until he was found competent to stand trial. *Ibid.* Six days before trial, Davis made a motion to have his counsel dismissed and to have another attorney appointed. *Ibid.* The court denied the motion. *Ibid.* On the day of trial, Davis made it clear he would not participate with his appointed attorneys at trial, and was subsequently found incapable of assisting counsel and standing trial. *Id.*, at 1018. When Davis was finally found competent to stand trial, he again moved to dismiss his attorneys so he could proceed as his own counsel. *Ibid.* The trial court denied the motion, and the case proceeded to trial. *Ibid.*

The district court found Davis' claim to be without merit, *id.*, at 1022, reasoning that while the Constitution and state statutes have recognized the right to self-

representation, the right is "not absolute, but is qualified, and may be denied under some circumstances." *Id.*, at 1020. Thus, where the defendant's conduct during trial had resulted in speeches that "delved into subject matter whose relevance to the proceeding was often obscure and irrelevant[,]" the defendant's right to self-representation could be limited. *Id.*, at 1021. A right to self-representation could be denied because "[t]he right to defend *pro se* cannot be isolated from other elements of fair orderly administration of justice." *Id.*, at 1019.

The district court also rejected the argument that if Davis was not mentally competent to defend himself he should not have been found mentally competent to stand trial. *Id.*, at 1021. The *Davis* court found that the mental abilities required of the defendant to stand trial differed substantially from the abilities required of a defendant proceeding *pro se*. *Ibid.* Whereas a defendant standing trial only had to possess the mental ability to "render his counsel such assistance as to make possible a proper defense[,]" a defendant proceeding *pro se* was required to "be able to recognize proper defenses and evidence to support them and to be able to discard the irrelevant." *Ibid.*

The defendant in *McCann* v. *Maxwell*, 174 Ohio St. 282, 189 N. E. 2d 143 (1963), had been tried with the assistance of counsel in a first trial which resulted in the discharge of a jury for failure to reach a verdict. *Id.*, at 282, 189 N. E. 2d, at 144. His behavior in the first case had led the court to determine the petitioner required assistance of counsel at his second trial. *Id.*, at 286, 189 N. E. 2d, at 145-146. After his conviction, the defendant filed a petition for habeas corpus relief asserting that the trial court's refusal to allow him to represent himself at the second trial violated his constitutional rights. *Id.*, at 282, 285, 189 N. E. 2d, at

143, 145. The court denied relief. *Id.*, at 286, 189 N. E. 2d, at 146.

While the Ohio Supreme Court recognized that under ordinary circumstances the Constitution forbids a court from forcing counsel on the accused:

> "there must necessarily repose in the trial court a certain discretion in these matters. If the mental condition of an accused is such, either by mental derangement or by lack of knowledge, that the court feels that the accused would be incompetent to conduct his own defense and thus be deprived of a fair trial, or the gravity of the offense is such that it carries a severe penalty, the court may, in the interest of justice or if it feels it necessary in order to protect the judicial process from deterioration, appoint counsel to represent the accused." *Id.* at 285, 189 N. E. 2d, at 145.

Faretta addressed and rejected the argument that lack of technical legal knowledge could preclude a defendant from representing himself if he chose. See 422 U. S., at 836. To the extent *McCann*, *Cappetta*, and other pre-*Faretta* cases hold to the contrary, they are no longer good law. There is an important difference, though, between the awkwardness of a layman who does not know the ground rules of procedure and the incoherence of a mentally disturbed person who cannot tell what evidence and argument are relevant to the case. See *infra*, at 21. *Faretta* did not address that situation.

Prior to the *Faretta* decision, there was a national consensus that a right to self-representation existed. But see *People* v. *Sharp*, 7 Cal. 3d 448, 463-464, 499 P. 2d 489, 499 (1972) (legislative repudiation due to "heavy burden upon the administration of criminal justice without any advantages accruing to those

persons who desire to represent themselves"). The scope of that consensus, however, was limited to cases where the defendant had sufficient mental competence to exercise that choice without reducing the trial to a farce. For defendants in the mental twilight zone, there was no consensus for a rigid rule requiring trial judges to permit this self-destructive choice, and the better-reasoned decisions vested discretion in the trial court to deny the motion. The question now is whether the scope of the *Faretta* rule should extend beyond the consensus on which it was based.

B. The Scope of Consensus-Based Rules.

Whenever this Court confers federal constitutional status on a rule that is not stated in the text of the Constitution, it deprives the people of the several States of the power to decide that question themselves. Such a step is not always wrong, but it always calls for the greatest of caution. The power to decide at the state level all questions that the Constitution does not federalize is itself a constitutional right guaranteed in the Bill of Rights, specifically in the Tenth Amendment. When a court wrongly federalizes a question of policy that the Constitution actually leaves to the States, the court is violating one constitutional right on the pretense of protecting another one.

A number of rules have been found to be implicit in the Constitution on the basis of having been adopted universally or nearly so by the states. Guilt in a criminal case must be proved beyond a reasonable doubt. See *In re Winship*, 397 U. S. 358, 361-362 (1970). The penalty of death must not be imposed for the crime of rape, at least where the victim is an adult. See *Coker* v. *Georgia*, 433 U. S. 584, 594 (1977).

Too often, though, a rule that is constitutionalized on the basis of consensus becomes a device for federal

judicial micromanagement of questions of policy around the periphery of the rule, questions on which there was no consensus. See, *e.g.*, *Harris* v. *Alabama*, 513 U. S. 504, 512 (1995) (rejecting such an argument on one aspect of capital sentencing). While the core rule in *Winship* was universally agreed, the implementation of that rule in jury instructions varied, and the constitutionalization of the rule made this Court the editor-in-chief of jury instructions, with dubious results. *Cage* v. *Louisiana*, 498 U. S. 39, 41 (1990) (*per curiam*), struck down a jury instruction, but *Cage* was subsequently found to have applied the wrong standard, see *Victor* v. *Nebraska*, 511 U. S. 1, 5-6 (1994), and to this day we do not know if *Cage* was correct.

Atkins v. *Virginia*, 536 U. S. 304, 313-317 (2002), found a national consensus in statutes prohibiting the execution of mentally retarded murderers. *Atkins* was promptly followed by attacks on the very statutes that had formed the consensus. See, *e.g.*, *Ferrell* v. *Head*, 398 F. Supp. 2d 1273, 1295 (ND Ga. 2005). In *Pruitt* v. *State*, 834 N. E. 2d 90, 99, 103 (Ind. 2005), such an attack actually succeeded. The fact that such a claim can even be credibly made, much less succeed, points out the need to clarify a principle.

The Constitution protects *fundamental* rights. It should not be "a detailed code of criminal procedure." Cf. Friendly, The Bill of Rights as a Code of Criminal Procedure, 53 Cal. L. Rev. 929, 954 (1965). If a rule is deemed constitutional not because it is in the text but because its nearly universal adoption by states indicates that it is part of the process of law that is due, then the constitutional limitation should be limited to the core principle that is so agreed upon. The federal constitutional rule should extend no further, and the questions that inevitably arise around the periphery should be considered matters of state law.

II. In some contexts, an essential interest of the State may justify a limitation on the defendant's constitutional rights.

> "All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached." *Hudson County Water Co.* v. *McCarter*, 209 U. S. 349, 355 (1908) (Holmes, J.).

The notion that the *Faretta* right of self-representation must be given controlling effect in every case where the Sixth Amendment right to counsel has been validly waived, without regard to the State's interest in a fair and orderly trial, is a prime example of carrying a right to its logical extreme. This Court has, in other contexts, recognized that certain rights of defendants are not absolute and need not be carried to their logical extremes. Instead, defendants' rights may occasionally yield to the overriding need to conduct a trial and to conduct it fairly.

A. Illinois v. Allen and Deck v. Missouri.

The defendant's right to due process of law generally includes the right to be present at trial. See *Snyder* v. *Massachusetts*, 291 U. S. 97, 105-106 (1934). However, in *Illinois* v. *Allen*, 397 U. S. 337, 347 (1970), this Court found no legal error when a trial judge excluded an obstreperous defendant from his own trial. The right to be present could be denied to a threatening and verbally abusive defendant when his speech at trial was so "disruptive that it is exceedingly difficult or wholly impossible to carry on the trial." *Id.*, at 338. This Court recognized that "trial judges confronted with disruptive, contumacious, stubbornly defiant defen-

dants must be given sufficient discretion to meet the circumstances of each case." *Id.*, at 343. The available alternatives include the authority to "(1) bind and gag [a defendant], thereby keeping him present; (2) cite him for contempt; (3) take him out of the courtroom until he promises to conduct himself properly." *Id.*, at 344.

Allen did not give the trial judge unlimited authority to exclude the defendant. Instead, a trial judge's ability to limit the right is conditioned on the need to prevent defendants from thwarting and obstructing orderly progress at trial. See *id.*, at 346. "It is essential to the proper administration of criminal justice that dignity, order and decorum be the hallmarks of all court proceedings in our country." *Id.*, at 343. Under *Allen*, a criminal defendant's behavior may require limitation of his constitutional right to be present at trial, and the trial judge has the authority to do so.

The *Allen* principle was applied to shackling in *Deck* v. *Missouri*, 544 U. S. 622, 624 (2005). "We hold that the Constitution forbids the use of visible shackles during the penalty phase, as it forbids their use during the guilt phase, *unless* the use is 'justified by an essential state interest'—such as the interest in courtroom security—specific to the defendant on trial." *Id.*, at 624 (emphasis in original). Even though the right not to be shackled in front of the jury "has a constitutional dimension; . . . the right may be overcome in a particular instance by essential state interests such as physical security, escape prevention, or courtroom decorum." *Id.*, at 628; see also *id.*, at 633 ("not absolute").

B. Sell v. United States.

The Fourteenth Amendment protects a defendant's liberty "interest in freedom from unwanted antipsychotic drugs." *Riggins* v. *Nevada*, 504 U. S. 127, 136 (1992). Even so, this Court has found that the federal

Constitution may, under some circumstances, permit the government to administer antipsychotic drugs against a defendant's will so that the defendant is competent to stand trial. At times, a defendant's constitutional rights may be subordinated to the "Government's interest in bringing to trial an individual accused of a serious crime . . . ." *Sell* v. *United States*, 539 U. S. 166, 180 (2003).

In *Sell*, the petitioner had a long history of mental illness. *Id.*, at 169. When charges were brought against him for submitting fictitious insurance claims for payment, a Magistrate found Sell incompetent to stand trial. *Id.*, at 170-171. Sell was hospitalized, and within two months of his hospitalization, it was recommended that Sell take antipsychotic medication. *Id.*, at 171. When Sell refused, the staff sought permission from the Magistrate to administer the drugs against Sell's will. *Ibid.* The District Court affirmed the Magistrate's decision to allow administration because forced medication was " 'medically appropriate' " and " 'the only viable hope of rendering the defendant competent to stand trial.' " *Id.*, at 174.

This Court found that while the defendant has a constitutional right of privacy, "the Constitution permits the Government involuntarily to administer antipsychotic drugs to a mentally ill defendant facing serious criminal charges in order to render that defendant competent to stand trial . . . ." *Id.*, at 179. The limit came with certain conditions: "if the treatment is medically appropriate, is substantially unlikely to have side effects that may undermine the fairness of the trial, and, taking account less intrusive alternatives, is necessary significantly to further important trial-related interests." *Ibid.* A defendant's constitutional rights could be limited because of the Government's "substantial interest in timely prosecution," and

because "the Government has a concomitant, constitutionally essential interest in assuring the defendant's trial is a fair one." *Id.*, at 180. While this Court found the record did not support forced medication in Sell's case, the limit articulated by its decision is important to the present case. It stands as another example of an important right that the Court has limited when the defendant's exercise of the right would undermine the government interest in fair and orderly justice.

When necessary to ensure fairness and security in our criminal justice system, this Court has endorsed more drastic limits on defendants' rights than the limit at issue in the present case. Exclusion from trial, binding and gagging or shackling in view of the jury, and involuntary medication are all more drastic measures. This case only requires the Court to recognize that under federal law, States are not prohibited from placing their own limits on a defendant who is competent to stand trial but not capable of representing himself. Because a defendant's right to proceed *pro se* does not flow from a determination that he is competent to waive counsel, States may place limits on self-representation when evidence in the record demonstrates the defendant's behavior may frustrate the fair administration of justice.

III. In cases of marginally competent defendants, there should be a window in which the trial judge has discretion to allow or deny self-representation.

A state may find a defendant has competently waived his right to counsel, but a valid waiver does not necessarily give the defendant the constitutional right to defend himself. The Indiana Supreme Court was incorrect to find reversible error as a matter of federal

constitutional law when the defendant was denied self-representation because he was incapable of presenting his own defense.

A. The Need for Limits.

In his dissent in *Faretta* v. *California*, 422 U. S. 806 (1975), Justice Blackmun chastised the Court for "bestow[ing] a *constitutional* right on one to make a fool of himself." *Id.*, at 852 (emphasis in original); see also *Godinez* v. *Moran*, 509 U. S. 389, 404 (1993) (Kennedy, J., concurring in part and concurring in the judgment). While Justice Blackmun may have been only using the old proverb "that 'one who is his own lawyer has a fool for a client,' "[3] to make a point, trial courts have often been forced to suffer such fools. Such trials have undermined public confidence in the judicial system, a result that could be avoided if a trial court is able to limit the marginally competent defendant's right to proceed *pro se*.

The trial of Scott Panetti is one such example. In 1995, Panetti was tried and convicted for killing his wife's parents. See *Panetti* v. *Quarterman*, 551 U. S. __, 127 S. Ct. 2842, 2848, 168 L. Ed. 2d 662, 671 (2007). Following a jury trial on the question of competence, Panetti moved to dismiss his lawyers and represent himself. *Ibid.* The trial judge expressed reservations, but granted the motion. See *Panetti* v. *State*, No. 72,230 (Tex. Crim. App., Dec. 3, 1997), pp. 26-27, available at http://www.cjlf.org/briefs/Panetti/PanettiDirectAppeal.pdf. Texas takes the same view that the Indiana court did in the present case, *i.e.*, that a defendant who is competent to *choose* to represent himself *must* be allowed to do so, even if he is not

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3. This proverb goes back at least to 1809. See F. Shapiro, Oxford Dictionary of American Legal Quotations 44 (1993).

competent to actually do so. See *id.*, at 27. The trial that ensued illustrates how a *Faretta* motion by a marginally competent defendant places the trial court in an impossible position. See Erickson, Book Review: Mind Over Morality, 54 Buffalo L. Rev. 1555, 1564 (2007).

On the first day of trial, Panetti arrived in a " 'Tom Mix' style costume like an old TV Western." Joint Appendix in *Panetti* v. *Quarterman*, No. 06-6407 ("*Panetti* J. A."), p. 23. He wore a cowboy hat in court along with suede leather pants which he tucked into his cowboy boots. *Ibid.* During the trial, he insisted on using "old west vernacular in his speech[]" using phrases like " 'run away mule" and "shoe the bosses' hosses.' " *Id.*, at 23-24. His opening statement was incoherent. *Id.*, at 342-343. He discussed Medicaid, jurors that had not been chosen during voir dire, and made repeated references to religiosity. *Ibid.* And the displays did not end there. Panetti also appeared to fall asleep during trial, *id.*, at 23, and attempted to give the jury a full account of his life beginning "with his birth" during his direct testimony. *Id.*, at 343. Throughout his testimony, "Panetti's dialogue was circumstantial, tangential, and full of looseness of associations." *Ibid.*

Panetti's standby counsel later stated that "his trial was truly a judicial farce, and a mockery of self-representation." *Id.*, at 26. The resulting guilty verdict and death sentence led to wide criticism of Texas' criminal justice system. See Blumenthal, *Insanity Issue Lingers as Texas Execution is Set,* N. Y. Times, Feb. 4, 2004, p. A12. The executive director of the Texas Defender Service stated, "Allowing a schizophrenic in a cowboy costume to represent himself in a death penalty case gives new meaning to the term 'frontier justice,' . . . . Given the Texas Court of Criminal Appeals' history of tolerance for defense lawyers who sleep or use drugs

and alcohol throughout death penalty trials, however, its laissez-faire approach is hardly surprising." *Ibid.* That criticism of the Texas courts, however, was misdirected. The Texas Legislature has codified the same view of the *Faretta* rule that the Indiana Supreme Court took in the present case. See Tex. Code Crim. Proc., Art. 1.051(g). That codification is understandable given the constitutional uncertainty of any other rule, and only this Court can remove the doubt. In President Truman's famous words, "the buck stops here."

With the threat of reversal for *Faretta* error hanging over them, trial courts have been forced to tolerate proceedings that result in a mockery of justice. See Erickson, 54 Buffalo L. Rev., at 1564. For this reason, States should be permitted to place limits on a defendant's right to proceed *pro se*. A trial court must not be caught in the position where denying a *Faretta* motion will lead to reversal, and granting the motion will allow the "trial to become a farce." *Ibid.*

B. Competence to Waive Counsel Standard.

In *Godinez* v. *Moran*, 509 U. S. 389 (1993), this Court rejected the notion that a defendant's competency to waive his constitutional right to counsel required a higher level mental functioning than the level required for the defendant to stand trial. *Id.*, at 398. A criminal defendant is competent to waive his right to counsel if he has " 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding' and has 'a rational as well as factual understanding of the proceedings against him.' " *Id.*, at 396 (quoting *Dusky* v. *United States*, 362 U. S. 402 (1960) *(per curiam)*). In so ruling, this Court articulated that a criminal defendant's competence to waive his right to counsel is distinct from, and inde-

pendent of, the criminal defendant's competence to represent himself. *Id.*, at 399.

Godinez did not resolve whether the defendant's ability to choose self-representation necessarily gave the defendant the right to proceed *pro se*. Instead, *Godinez* only articulated the constitutionally permitted minimum standard of competency necessary to waive counsel. The defendant must be competent to stand trial and to make a knowing and voluntary waiver of his right to counsel. See *id.*, 401-402. However, this constitutional floor on when a State *may* permit defendant to waive counsel is not a ceiling on when it *must*. "[W]hile States are free to adopt competency standards that are more elaborate than the *Dusky* formulation, the Due Process Clause does not impose these requirements." *Id.*, at 402; see also *id.*, at 408 (Kennedy, J., concurring in part and concurring in the judgment) ("due process does not preclude Nevada's use of a single competency standard"). In other words, *Godinez* implies that there is a window between the minimal *Dusky* competence at which a State *may* allow a defendant to waive counsel and some higher, "more elaborate" standard above which it *must* do so under *Faretta*. A state may wish to adopt such a permitted, higher standard to protect its own interests in fair and orderly proceedings, see *supra*, at 7, 19, even when the defendant has waived his own rights.

Godinez is based on the capacity to waive a right, not the capacity to exercise a related but distinct right. If a defendant has validly waived his Sixth Amendment right to counsel, he has no claim of reversible error when the trial court permits him to represent himself. On the other hand, if the defendant's mental capacity is such that the State may deny self-representation to protect *its own* interests in courtroom order, a functioning adversary system, and public confidence in the

fairness of the proceedings, then there has been no violation of *Faretta* if the trial court denies self-representation. The space between competency to waive counsel and the ability to represent oneself creates a window of discretion within which no constitutional right of the defendant is violated whichever way the trial court rules.

C. The State's Independent Interest in a Fair Trial.

Cases such as *Panetti* are clear examples of where a state's independent interest in a fair trial may outweigh the defendant's interest in proceeding *pro se*. See *Martinez* v. *Court of Appeal of Cal., Fourth Appellate Dist.*, 528 U. S. 152, 162 (2000) (noting other examples). While courts have recognized that a person has a right to defend himself, there are circumstances where the state should not have to permit the exercise of this right. The minimal competency required of a defendant to make this choice does not guarantee that the defendant will exercise his right to self-representation in a manner that results in a fair and orderly trial.

Once the trial judge finds that the defendant has knowingly and intelligently chosen to waive his Sixth Amendment right to counsel, that right is no longer an obstacle to self-representation. However, the trial judge should also determine if the state's interest in a fair trial will be hindered by a marginally competent defendant's self-representation. If the state's interest will be hindered, the judge should be allowed to limit the defendant's right to self-representation by imposing counsel.

The *Faretta* right to self-representation, like the rights at issue in *Allen*, *Deck*, and *Sell*, should be interpreted to allow States to protect their own essential interests. Reversible error must not be found every time a state court finds its own interest in justice

requires it to limit the defendant's right to represent himself. Courts must not be compelled, as the Indiana Supreme Court believed it was in this case, to hold "that because [a defendant is] found competent to stand trial he ha[s] a constitutional right to proceed pro se . . . ." App. to Pet. for Cert. 14a. The Sixth Amendment does not require such a result, and Indiana may employ a "more elaborate" standard as a matter of state law.

CONCLUSION

The decision of the Supreme Court of Indiana should be vacated and the case remanded.

February, 2008

Respectfully submitted,

KENT S. SCHEIDEGGER

Attorney for Amicus Curiae
Criminal Justice Legal Foundation

AMICUS CURIAE BRIEF

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STATE OF INDIANA,

Petitioner,

v.

AHMAD EDWARDS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF INDIANA

BRIEF OF OHIO AND 18 OTHER STATES AS AMICI CURIAE IN SUPPORT OF PETITIONER

MARC DANN
Attorney General of Ohio

WILLIAM P. MARSHALL*
Solicitor General
**Counsel of Record*
ROBERT J. KRUMMEN
MICHAEL DOMINIC MEUTI
KIMBERLY A. OLSON
Deputy Solicitors
KELLY A. BORCHERS
Assistant Solicitor
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax

Counsel for Amicus Curiae
State of Ohio

TROY KING
Attorney General
State of Alabama

TALIS J. COLBERG
Attorney General
State of Alaska

TERRY GODDARD
Attorney General
State of Arizona

JOHN W. SUTHERS
Attorney General
State of Colorado

BILL MCCOLLUM
Attorney General
State of Florida

MARK J. BENNETT
Attorney General
State of Hawaii

LISA MADIGAN
Attorney General
State of Illinois

THOMAS J. MILLER
Attorney General
State of Iowa

STEPHEN N. SIX
Attorney General
State of Kansas

MICHAEL A. COX
Attorney General
State of Michigan

JEREMIAH W. (JAY) NIXON
Attorney General
State of Missouri

CATHERINE CORTEZ MASTO
Attorney General
State of Nevada

ALBERT LAMA
Attorney General
State of New Mexico

HARDY MYERS
Attorney General
State of Oregon

THOMAS W. CORBETT, JR.
Attorney General
Commonwealth of Pennsylvania

HENRY MCMASTER
Attorney General
State of South Carolina

MARK L. SHURTLEFF
Attorney General
State of Utah

ROBERT M. MCKENNA
Attorney General
State of Washington

QUESTION PRESENTED

May a State impose a standard for determining whether a defendant is competent to proceed pro se higher than the *Dusky* standard for competency to stand trial?

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STATEMENT OF AMICI INTEREST

The Amici States have a direct interest in this case because it could determine every State's level of autonomy in developing its own standards of competency for criminal defendant self-representation. Additionally, the Amici States possess strong interests in affording pro se defendants a fair trial and maintaining the integrity of the judicial forum. Both of these interests are threatened when incompetent defendants attempt to conduct their own defense. This case will affect the participants in the state criminal justice system—defendants, prosecutors, judges, jurors, crime victims, and the public at large—who share an interest in the integrity of the system. Finally, the ruling of the Indiana Supreme Court undermines the Amici States' strong interest in the finality of their courts' criminal judgments by making unduly vulnerable to appeal all trial court rulings on a motion to proceed pro se.

SUMMARY OF ARGUMENT

The Court has never addressed the general issue in this case: the standard of competency that a criminal defendant must satisfy before exercising his Sixth Amendment right under *Faretta v. California*, 422 U.S. 806 (1975), to represent himself at trial. Nor has it addressed the specific issue: whether the States are free to require such defendants to satisfy a standard higher than the due process competency-to-stand-trial standard announced in *Dusky v. United States*, 362 U.S. 402 (1960). This case presents a rare opportunity to clarify the contours of the *Faretta* right, as well as the scope of the States' powers to

further their important interests in fair, efficient trials and the finality of their courts' criminal judgments.

Under the *Dusky* standard, a criminal defendant is competent to stand trial so long as "he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "a rational as well as factual understanding of the proceedings against him." *Id.* at 402 (internal quotation marks omitted). This standard presupposes that any defendant proceeding to trial will be represented by counsel. But as the Court has long recognized, counsel is not required; instead, a criminal defendant may waive his Sixth Amendment right to counsel, provided that he does so "competently and intelligently." *Johnson v. Zerbst*, 304 U.S. 458, 468 (1938). In *Godinez v. Moran*, 509 U.S. 389 (1993), the Court advanced a unitary theory of competency. Under that theory, a defendant who is competent to stand trial is equally competent to waive the right to counsel and to decide to plead guilty and thereby waive certain other constitutional rights. Importantly, however, *Godinez* did not address a defendant's right to self-represent at trial—a right that, as *Faretta* made clear, is analytically and doctrinally distinct from the right to waive counsel. 422 U.S. at 819, n.15. Accordingly, the unitary theory of competency expressed in *Godinez* does not extend to competency to proceed pro se to trial.

A defendant who opts to self-represent at trial threatens important State interests in ways that a defendant who waives counsel to plead guilty does not. Proceeding pro se at trial threatens the very

underpinnings of the adversary system by creating an insurmountable mismatch in the quality of representation. This asymmetry compromises the judge's neutrality by forcing her to take an active role in managing the proceedings, and—especially in the case of a mentally unstable defendant—undermines the dignity of the courtroom. In this way, a pro se defendant unwittingly jeopardizes his own right to a fair trial. To protect the fairness of criminal proceedings to all sides, States must be free to impose a higher competency standard upon defendants proceeding pro se.

Permitting the States to enact such a higher standard also furthers their important interest in the finality of their criminal judgments. Presently, judges face a Catch-22 every time they rule on a motion to proceed pro se. Regardless of whether they hold that a defendant is competent to self-represent, the defendant may appeal the result, arguing constitutional error in either direction. If the defendant was allowed to proceed pro se, he can argue on appeal that his incompetence to do so deprived him of a fair trial. If he was not allowed to proceed pro se, he can argue a violation of his *Faretta* right to self-represent. Allowing the States to apply an enhanced standard of competency when criminal defendants wish to proceed pro se, however, diminishes defendants' ability to appeal favorable rulings, and thus advances the States' important interest in finality.

For these reasons, Amici States urge the Court to reverse the judgment of the Indiana Supreme Court and to hold that States are free to adopt

standards for self-representation higher than the *Dusky* standard for competency to stand trial.

ARGUMENT

The Court should reverse the judgment of the Indiana Supreme Court and hold that when criminal defendants wish to proceed pro se at trial, the States are free to impose a standard of competency higher than the *Dusky* standard for competency to proceed to trial with a lawyer. Since recognizing the right to proceed pro se in *Faretta*, the Court has not addressed this issue and accordingly has not confronted, in this context, the stark and important State interests justifying a higher competency standard. Unlike the scenario in which a criminal defendant wishes to waive counsel and immediately plead guilty, the decision to proceed to trial pro se implicates the States' interest in maintaining the integrity of the judicial system—an interest that the States, their citizens, and individual criminal defendants share. Additionally, permitting the States to erect enhanced competency standards for self-representation at trial advances their important interest in the finality of their courts' judgments. These concerns weigh heavily in favor of recognizing that nothing in *Faretta* or its progeny prevents the States from requiring that defendants who desire to proceed to trial pro se meet a higher competency threshold than those who proceed to trial with a lawyer.

A. The narrow right to proceed to trial pro se is distinct from the right to waive counsel.

1. In *Faretta v. California*, the Court recognized a narrow right to self-representation.

Faretta v. California recognized that the Sixth Amendment provides criminal defendants a limited right to represent themselves at trial. The Court considered the text and structure of the Sixth Amendment, as well as British and colonial legal history, and concluded that criminal defendants have a Sixth Amendment right to conduct their own defense at trial. 422 U.S. at 818-19. This holding was not an endorsement of self-representation. Instead, the Court noted that when a defendant proceeds pro se, he gives up "many of the traditional benefits associated with the right to counsel. For this reason, in order to represent himself, the accused must 'knowingly and intelligently' forgo those relinquished benefits." *Id.* at 835 (citing *Johnson v. Zerbst*, 304 U.S. 458, 464-65 (1938)).[1]

Although the Court did not address explicitly the standard of competency a defendant must meet to proceed pro se, it did make clear that the right is narrow. First, the Court stated that "the trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct." *Id.* at 834 n.46 (citing *Illinois v. Allen*, 397 U.S. 337 (1970)). The Court

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[1] Although the *Faretta* Court cited *Zerbst* for the "knowing and intelligent" standard, the *Zerbst* Court actually held that a waiver of counsel must be "intelligent and competent." *Zerbst*, 304 U.S. at 465, 468.

further circumscribed this right by stating that the State may appoint standby counsel for a pro se defendant, even if the defendant objects. *Id.* Finally, the Court explained that the right to self-representation must yield to the States' important interest in maintaining dignity and order in their judicial proceedings: "The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with the relevant rules of procedural and substantive law." *Id.*

2. *Faretta*'s progeny confirm that the right to self-representation is narrow.

After *Faretta*, the Court repeatedly confirmed that a defendant's right to represent himself is not absolute. Instead, "the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." *Martinez v. Court of App. of Cal., Fourth App. Dist.*, 528 U.S. 152, 162 (2000). Thus, a court may allow standby counsel to participate at trial, even over the defendant's objection, so long as counsel's actions do not "seriously undermine" the impression that the defendant is representing himself. *McKaskle v. Wiggins*, 465 U.S. 168, 184, 187 (1984). Similarly, States may deny defendants the ability to represent themselves on appeal. *Martinez*, 528 U.S. at 163. This narrow *Faretta* right to proceed pro se, then, does not prevent the States from requiring prospective pro se defendants to demonstrate a higher degree of competency than necessary under *Dusky* to be found competent to stand trial.

3. The right to self-represent differs from the right to waive the assistance of counsel to plead guilty.

As a practical matter, a defendant cannot self-represent without first waiving counsel. But as a legal matter, the right to waive counsel and the right to self-represent are two different things. By the same token, waiving the Sixth Amendment right to counsel to then plead guilty is not the same as exercising the Sixth Amendment *Faretta* right to self-represent at trial.

Faretta establishes that the right to represent oneself at trial is doctrinally distinct from the right to waive counsel. The *Faretta* Court explicitly rejected the notion that the right of self-representation "arises mechanically from a defendant's power to waive the right to the assistance of counsel." 422 U.S. at 819 n.15. Instead, the Court reasoned, "the right [to self-representation at trial] must be independently found in the structure and history of the constitutional text." *Id.* Were this not the case, *Faretta*'s analysis of British and colonial history would have been entirely unnecessary, and *Zerbst* would have been dispositive.

The right to self-representation at trial is also analytically distinct from the right to waive counsel to plead guilty. As explained more thoroughly in Part B below, a defendant who proceeds to trial pro se threatens a core state interest—the interest in ensuring the fair and efficient administration of justice. A defendant who proceeds without counsel only to plead guilty does not threaten the fairness, efficiency, or public perception of the criminal justice

system. Nor does that defendant undermine the integrity of the judicial forum in the way that some mentally unstable pro se defendants do at trial. This difference militates in favor of permitting States to enact higher competency standards for defendants proceeding pro se than for those who are represented at trial.

The Court has never addressed the general issue that this case presents—the standard of competency applicable to self-representation at trial. The Indiana Supreme Court reasoned that the Court addressed this issue in *Godinez v. Moran*, 509 U.S. 389 (1993). See *Edwards v. Indiana*, 866 N.E.2d 252, 259 (Ind. 2007). But *Godinez* involved a defendant who sought to waive his right to counsel only to plead guilty, not to represent himself at trial. *Godinez*, 509 U.S. at 392-93. Thus, the defendant in *Godinez* invoked his *Zerbst* right to waive counsel, but not his *Faretta* right to represent himself at trial.

In *Godinez*, the Court concluded that the *Dusky* standard determines not only the defendant's competency to stand trial, but also his competency to waive counsel and plead guilty. 509 U.S. at 398-99. The Court reasoned that a defendant who pleads guilty waives a trio of associated rights—to avoid self-incrimination, to trial by jury, and to confront adverse witnesses. *Id.* at 398. The decision to waive these rights, the Court held, is no more difficult or weighty than the series of decisions a defendant must make if he proceeds to trial—e.g., whether to exercise his confrontation right, whether to seek a jury trial or a bench trial (if available), and whether to take the stand. *Id.* Accordingly, the Court held that if a defendant satisfies the *Dusky* standard for

competency to stand trial, then he is competent to choose to plead guilty. *Id.* at 399. And because the Court found "no reason to believe that the decision to waive counsel requires an appreciably higher level of mental functioning than the decision to waive other constitutional rights," it concluded that the *Dusky* standard also applies to the decision to waive counsel. *Id.*

Notably, the *Godinez* Court did not address the standard of competency that would have applied had the defendant desired to represent himself at trial. The Court recognized as much, emphasizing that the competence at issue was "the competence to *waive the right*, not the competence [of the defendant] to represent himself." *Id.* at 399. And in this respect, the *Godinez* Court distinguished the competency to waive counsel and plead guilty from other, more complex decisions that might arise if the matter proceeded to trial—decisions in which the Court assumed an attorney would assist: "*In consultation with his attorney*, [a defendant who pleads not guilty] may be called upon to decide, among other things, whether (and how) to put on a defense and whether to raise one or more affirmative defenses." *Id.* at 398 (emphasis added).

Thus, the right to self-representation is different from the right to waive counsel, and the two should not be conflated. Moreover, as explained more thoroughly below, the prospect of a defendant who wishes to represent himself at trial pro se also implicates the State's ability to administer justice. These concerns do not arise in the scenario in *Godinez*—when a defendant wishes to waive counsel only to plead guilty. For these reasons, the Court

should acknowledge that the competency to represent oneself at trial is not the same as the competency to waive counsel and then plead guilty.

B. Prohibiting States from applying an enhanced competency standard for self-representation undermines the fair and efficient administration of justice.

Individuals and States alike have the right to a fair judicial system. Integrity in the judicial system allows justice to be administered fairly and properly. Such administration, in turn, instills confidence in the judicial system and its institutions. As a nation, we are committed to a government of laws, requiring constitutional safeguards to attend every stage of a criminal proceeding. *Cox v. Louisiana*, 379 U.S. 559, 562 (1965). Justice may be done, however, only if judges retain the power to maintain order and dignity in their courtrooms. See *Allen* 397 U.S. at 343 ("It is essential to the proper administration of justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country."). Forcing States to allow a defendant who suffers from a severe mental impairment to represent himself risks the dignity of the States' courtrooms and, accordingly, the public's estimation of the criminal justice system. Thus, prohibiting States from employing a heightened standard of competency for self-representation frustrates the administration of justice and violates both the individual's right to a fair trial and the State's duty to administer justice.

1. The right to self-representation must at times yield to the right to fair and impartial judicial proceedings.

Acknowledging the importance of the fair and impartial administration of justice, the Court has recognized both the individual's right and the State's right to fair and impartial judicial proceedings. This shared right favors the States' ability to apply an enhanced standard of competency.

For the individual, the right to a fair trial requires judges to maintain courtroom decorum and conduct proceedings in an impartial manner. See *Sheppard v. Maxwell*, 384 U.S. 333 (1966) (holding that "[t]he carnival atmosphere" of defendant's trial violated his due process rights). The Court in *Sheppard* explained that the trial court's "fundamental error" was "compounded by the holding that it lacked power to control the publicity," leading to the violation of the defendant's rights. *Id.* at 358. The court must ensure that "the accused receive[s] a trial by an impartial jury free from outside influences." *Id.* at 362. A judge must, therefore, guarantee that a defendant's trial, in the aggregate, is fair.

Applying *Sheppard*'s reasoning to other contexts, Justice Souter explained that a trial judge has an "affirmative obligation" to control her courtroom and guard it from "improper influences." *Carey v. Musladin*, 127 S. Ct. 649, 657 (2006) (Souter, J., concurring). Among these influences, judges must consider all elements open to jurors' observation and ask "whether the practice or condition presents 'an unacceptable risk . . . of impermissible factors coming into play' in the jury's

consideration of the case." *Id.* at 657 (citing *Holbrook v. Flynn*, 475 U.S. 560, 570 (1986)). Among those factors that could influence the jury is, obviously, the defendant's behavior.

The constitutional interest in protecting the integrity of the judicial system belongs both to the individual and to the State. The State has an "*important* government interest[] . . . in bringing to trial an individual accused of a serious crime" and a "concomitant, constitutionally essential interest in assuring that the defendant's trial is a fair one." *Sell v. United States*, 539 U.S. 166, 180 (2003). Thus, the State's interest in fairly administering justice dovetails with the individual defendant's interest in receiving a fair trial. See *Allen*, 397 U.S. at 343 (recognizing the State's interest in preserving the dignity, order, and decorum of the criminal justice system); see also *Wheat v. United States*, 486 U.S. 153, 160 (1988) ("[C]ourts have an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them.").

Courts often must weigh this right to fair and impartial judicial proceedings against other constitutional rights. For instance, the Court concluded that the administration-of-justice interest trumps a criminal defendant's Sixth Amendment right to confront opposing witnesses by remaining in the courtroom during trial. The Court explained that the "Sixth Amendment . . . [cannot] so handicap a trial judge in conducting a criminal trial" that "it is exceedingly difficult or wholly impossible to carry on the trial." *Allen*, 397 U.S. at 338; see also *id.* at 347

("[O]ur courts, palladiums of liberty as they are, cannot be treated disrespectfully with impunity. Nor can the accused be permitted by his disruptive conduct [to] thwart[] and obstruct[] . . . justice."). Similarly, a defendant's constitutional right to remain free of visible physical restraints may be overcome by "essential state interests such as . . . courtroom decorum." *Deck v. Missouri*, 544 U.S. 622, 628 (2005).

Like these other rights, the Sixth Amendment right to self-representation is not absolute, and the Court must weigh a defendant's Sixth Amendment interests against the right to the fair and impartial administration of justice. As noted above, the *Faretta* Court acknowledged the need for such balancing by recognizing that the right to self-representation at trial yields to the State's interest in preserving integrity in the judicial system. *Faretta*, 422 U.S. at 834 n.46 ("The right of self-representation is not a license to abuse the dignity of the courtroom."); see also *Martinez v. Court of Appeal*, 528 U.S. 152, 161-62 (2000) ("As the *Faretta* opinion recognized, the right to self-representation is not absolute. . . . [T]he government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer.").

The right to self-representation, like the rights at issue in *Allen* and *Deck*, must at times give way to the need for the fair and impartial administration of justice. Such a time arises when a defendant, perhaps suffering from a mental impairment, lacks the competency to understand and respect courtroom decorum and procedures.

2. Prohibiting Indiana and other States from employing an enhanced standard of competency undermines the efficacy and efficiency of the judicial system and weakens public confidence in judicial institutions.

In the present case, the trial court, taking account of Edwards's schizophrenia and history of erratic behavior, determined that Edwards was incapable of self-representation. (App. 36a-37a). Edwards's doctors described his thought processes as "extremely tangential," and they concluded that he was competent to stand trial *only if* he received "assistance of counsel." (Ed. App. 149, 39a). The trial court also had first-hand knowledge of Edwards's mental state through the incoherent motions and correspondence that Edwards had submitted to the Court, including a motion to dismiss where he "pray[ed] [upon] psalm 15.5 for innocent of court property to be dismissed wherefore, so shall it be done." (Ed. App. 624).[2] It is highly likely that Edwards would have created an "environment so raucous that calm deliberation by the judge or jury [would have been] compromised in a serious way." *Carey*, 127 S. Ct. at 656 (Kennedy, J., concurring) (explaining why the trial of Dr. Sheppard denied him due process).

Indeed, chaos often ensues when defendants who suffer from severe mental impairments are permitted to proceed pro se. For example, in a Texas murder case, *State v. Panetti*, the mentally ill defendant paraded around the courtroom wearing an

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[2] References to "Ed. App." are to Edwards's Appendix filed in the Indiana Court of Appeals.

old-style Western purple cowboy costume and flipped coins to make decisions. See Jessica McBride, *How Can an Insane Man Defend Himself?*, Milwaukee J. Sentinel, Feb. 15, 2004, at J1. Such antics made it difficult for the jurors to focus on the gravity of the proceedings. *Id.* Similarly, Colin Ferguson, a mentally impaired pro se litigant accused of killing six and wounding nineteen passengers on a Long Island commuter train, told the jury: "There are 93 counts in the indictment only because it matches the year 1993. . . . Had it been 1925, it would have been 25 counts." Stanley S. Arkin & Katherine E. Hargrove, *Justice Mocked When Madman Defends Himself*, L.A. Times, Feb. 12, 1995, at M1. To administer justice fairly and impartially, States must be able to give their trial courts the discretion to refuse these defendants'—and Edwards's—requests to proceed pro se so that they may put on a meaningful defense. Prohibiting Indiana and other States from employing an enhanced standard of competency undermines the efficacy and efficiency of the judicial system and weakens public confidence in judicial institutions.

a. Prohibiting States from applying an enhanced competency standard undercuts the ability of the adversary system to reach fair and accurate results by fostering a gross and insurmountable asymmetry in the quality of representation between prosecution and defense.

The American judicial system can function only when two adversarial parties interact before a

neutral arbiter to reveal the truth. See Ellen E. Sward, *Values, Ideology, and the Evolution of the Adversary System*, 64 Ind. L.J. 301, 301 (1989) ("The hallmark of American adjudication is the adversary system."). Time and again, the Court has recognized the important role the adversary system plays in the search for truth. See, e.g., *Strickler v. Greene*, 527 U.S. 263, 281 (1999) (recognizing the special role of the prosecutor in the "search for truth"); *McKaskle*, 465 U.S. at 177 n.8 ("the defendant's right to proceed *pro se* exists in the larger context of the criminal trial designed to determine whether or not a defendant is guilty of the offense with which he is charged."); *Williams v. Florida*, 399 U.S. 78, 82 (1970) (upholding Florida rule designed to enhance the "search for truth" in criminal trials).

When a trained prosecutor advocates on behalf of the State while a defendant suffering from a mental impairment represents himself, the administration of justice breaks down. The judge finds herself in the precarious position of needing to keep order in her courtroom, while attempting to convey the elements of legal procedure to someone whose thought processes are "extremely tangential." See Ed.App. 149. Similarly, the jury, charged with searching for truth, is distracted by a defendant whose incoherence and bizarre antics become the focus of the trial. See, e.g., Jessica McBride, *supra*, at J1 (describing how the defendant's outrageous behavior scared and distracted jurors). Such an arrangement undermines the impartiality, efficiency, and confidence that our judicial system demands and deserves.

The American adversary system requires all parties to have advocates who will "zealously present [each] side of the dispute" and who will "'put his best foot forward.'" Roberta K. Flowers, *Updating the Ethics Code to Include the Non-Adversarial Roles of Prosecutors*, 37 B.C. L. Rev. 923, 940 (1996). Put another way, "[t]he adversary system presupposes that each side bears the obligation not only to present evidence supporting its case, but also to ferret out all evidence that supports his case and contradicts the opponent's case." *Id.* In choosing to represent himself, a non-competent defendant may, in actuality, be choosing to proceed without an advocate. In effect, a skilled prosecutor will be adverse to a mentally impaired defendant who has no one representing his case, making the search for truth exceedingly difficult, if not impossible.

While it may seem that a prosecutor would enjoy such an easy win, a prosecutor acts not only as an advocate for the State, but also as a seeker of justice. See Suzanne Roe Neely, Note, *Preserving Justice and Preventing Prejudice: Requiring Disclosure of Substantial Exculpatory Evidence to the Grand Jury*, 39 Am. Crim. L. Rev. 171, 177-178 (2002); see also *Berger v. United States*, 295 U.S. 78, 88 (1935) (describing the role of the United States Attorney as an advocate for justice, not simply as an advocate for an ordinary party). In this dual role, prosecutors seek not just to win, but to win fairly and to protect the integrity of the judicial system. See generally Christopher G. Frey, *Essay: The State v. the Self-Represented: A Florida Prosecutor's Concerns When Litigating Against Pro Se Defendant in a Criminal Trial*, 29 Stetson L. Rev. 181 (1999). A pro se defendant with severe mental impairments only

complicates the prosecutor's duties to advocate for the government and to search for justice. Forcing States to mismatch skilled prosecutors with defendants like Edwards, Panetti, or Ferguson cripples the adversary system. Without the option to apply an enhanced competency standard, States lose the ability to protect the adversary system and to ensure that their courtrooms facilitate the search for truth.

b. Prohibiting States from applying an enhanced competency standard for self-representation compromises the judge's role as a neutral arbiter, as the judge is caught between her duties to remain and appear to be neutral and to ensure that proper courtroom protocols are followed.

A hallmark of our judicial system is the impartial judge. As one commentator has explained:

> This impartiality is important for several reasons. It is important that the jury see the impartial nature of justice, in which they are being asked to participate. It is important that the judge avoid the conflicts of interest that may arise if he is supposed to make decisions neutrally while simultaneously informing the defendant of the law. And finally, it is important that the defendant and the prosecuting attorney both have an impartial tribunal before which they can present their cases.

Marie Higgins Williams, Comment, *The Pro Se Criminal Defendant, Standby Counsel, and the Judge: A Proposal for Better-Defined Roles*, 71 U. Colo. L. Rev. 789, 806 (2000). A judge faced with a mentally impaired pro se defendant may feel obliged to walk a defendant through the presentation of his case in order to prevent a trial's progress from derailing entirely. See *Taylor v. Hopper*, 596 F.2d 1284, 1291–92 (5th Cir. 1979) (stating that "the trial court announced in Taylor's presence that it would relax the usual rules and would give Taylor as much leeway 'as I can' and would probably allow him to violate some rules in instances which would not be permitted if he were represented by counsel"). A judge may even feel obliged to call and question witnesses herself. See *McKaskle*, 465 U.S. at 177 n.7.

Pro se defendants, especially those suffering from severe mental impairments, may often tempt a judge to abandon her role as impartial arbiter. To comply with their judicial duty to ensure a fair trial, judges may assist pro se defendants. See *Wheat v. United States*, 486 U.S. 153, 160 (1988) (stating trial courts possess responsibility to ensure fairness within trials). Indeed, such involvement may even provide a minimal degree of efficiency and order to avoid an otherwise chaotic courtroom. But a judge's active participation in the development of a pro se defendant's case compromises her role as impartial jurist—a linchpin in our adversary system. By bending procedural rules to allow the defendant to present his case, the judge runs the risk of offending other rights or privileges afforded to both the prosecution and the defense, or even giving the jury the impression that she favors the defense. Judge

Beverly Skukals, with her co-author Glen Sturtevant, explained this conundrum:

> Judges also have ethical duties they must comply with when presiding over cases involving pro se litigants. . . . [T]he Canons of Judicial Conduct require[] judges to perform the duties of their office impartially. Judges, however, must balance considerations of fairness to represented parties with due process requirements mandating that pro se litigants receive meaningful hearings. This balancing act requires judges to make difficult decisions, such as determining how much guidance to give a pro se litigant on substantive law or how to treat a meritorious case when the pro se litigant has failed to comply with court procedures, while remaining impartial to both the represented and pro se parties.

Beverly W. Snukals & Glen H. Sturtevant, Jr., *Pro Se Litigation: Best Practices from the Judge's Perspective*, 42 U. Rich. L. Rev. 93, 98 (2007). To ensure that judges maintain their proper role, States must have the power to require a higher degree of competency from defendants who wish to proceed pro se.

c. Prohibiting States from employing an enhanced standard of competency threatens jurors' ability to remain impartial and focused.

A jury's impartiality may also be compromised by the prejudicial effect of a mentally impaired defendant's incoherent defense and erratic behavior. A jury may easily become confused by or even biased against a pro se defendant attempting to convey his defense. For example, in *State v. Panetti*, the jurors became skeptical and fearful of the mentally ill defendant, who paraded around the courtroom wearing an old-style Western purple cowboy costume and flipped coins to make decisions. See McBride, *supra*, at J1. Thus, in such cases, although mental illness is typically considered a mitigating factor, it may become an aggravating factor because the jury views the mentally incompetent defendant as dangerous. *Id.*

Even when a mentally impaired pro se defendant is not threatening, his defense may be compromised if the jurors think he is "putting on a show" instead of actually partaking in a serious legal proceeding. See Ralph Blumenthal, *Insanity Issue Lingers as Texas Execution Is Set*, N.Y. Times, Feb. 4, 2004, at A12. This concern is especially acute when a pro se defendant opts to defend his case by arguing—and attempting to demonstrate to the jury—that he is insane. Not only can jurors become confused regarding the actual legal arguments presented by a pro se defendant who acts in an incoherent and extremely bizarre manner, but they

may also lose sight of the seriousness of the proceedings.

Alternatively, the jury may become biased in the other direction: The prospect of "try[ing], convict[ing], and punish[ing] one so helpless to defend himself," see *Godinez*, 509 U.S. at 417 (Blackmun, J., dissenting), may play upon the jurors' sympathies to such a degree that they become inclined to acquit without regard for the real question of guilt. In either scenario, the defendant's performance improperly influences the jury's decision and compromises the prospect of a fair verdict.

d. Prohibiting judges from applying an enhanced test for competency is inefficient and wastes judicial resources.

The Amici States recognize it is improper to deny a defendant his right to self-representation simply to advance a State's interest in efficient judicial proceedings. "[A] measure of unorthodoxy, confusion and delay is likely, perhaps inevitable, in pro se cases." *United States v. Dougherty*, 473 F.2d 1113, 1124–26 (D.C. Cir. 1972); see also Tiffany Buxton, Note, *Foreign Solutions to the U.S. Pro Se Phenomenon*, 34 Case W. Res. J. Int'l L. 103, 114-17 (2002) ("Pro se litigants are more likely to neglect time limits, miss court deadlines, and have problems understanding and applying the procedural and substantive law pertaining to their claim."). However, pro se defendants suffering from mental impairments—with their inability to follow legal procedure and their bizarre antics—may halt trials,

not simply delay them, making the administration of justice impracticable.

Additionally, when a defendant is incompetent to represent himself before the trial begins, a judge must risk overseeing a trial that violates the right to the fair and impartial administration of justice. Once a judge has helped a defendant to the extent that she is no longer impartial or it is clear that the jury cannot focus on its truth-finding mission, what is the next appropriate step? Should the judge require representation for the defendant at that point and proceed with the trial? Should the judge empanel a new jury? Does the process repeat itself? Prohibiting States from raising the competency standard for self-representation thus threatens to undermine judicial efficiency by producing a series of "do-overs."

e. Prohibiting judges from applying an enhanced test for competency undermines public confidence in the judicial system.

Finally, "courts have an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them." *Wheat v. United States*, 486 U.S. 153, 160 (1988); see also *Brady v. Maryland*, 373 U.S. 83, 87 (1963) ("Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly."). When a pro se defendant suffers from a serious mental impairment, a trial can quickly transform into a circus, undermining the public's confidence in judicial institutions.

When a defendant with a severe mental impairment is permitted to proceed pro se, instead of the public viewing the allowance as an affirmation of the defendant's right to self-representation, people may perceive the trial as an abomination of the defendant's right to a fair trial. Victims' families may also watch in dismay at the no-longer-impartial judge who appears to be assisting the accused. Or the public may see a skilled prosecutor mismatched with a mentally impaired defendant and question how such a disparity comports with justice. Often, national media attention focuses on the most egregious cases of the mentally impaired representing themselves, shattering the public's confidence in its own justice system. See Howard Witt, *Inmate Granted Stay*, Chi. Trib., Feb. 5, 2004, at 16. For example, the press quoted Dr. F.E. Seale, a psychiatrist who treated a schizophrenic, bipolar patient and then later observed part of his patient's pro se defense, as asking, "[H]ow in the world can our legal system allow an insane man to defend himself?" See *id.* In the interest of maintaining both the appearance and reality of a fair trial, states must be free to exercise their discretion to raise the competency test for pro se criminal defendants.

C. Prohibiting States from applying an enhanced competency standard for self-representation at trial undermines the States' interest in ensuring finality of their criminal judgments.

1. A unitary competency standard inevitably leads to appeals, even when a lower court decides in the defendant's favor.

A unitary competency standard threatens the States' strong interest in the finality of their judgments. In many cases, a defendant succeeds in persuading a trial court to allow him to proceed without counsel against his better interests, only to challenge his conviction on appeal on the basis of deprivation of counsel. See, e.g., *United States v. Ellerbe*, 372 F.3d 462, 466 (D.C. Cir. 2004); *Dunn v. Johnson*, 162 F.3d 302, 307-08 (5th Cir. 1998); *United States v. Herrera-Martinez*, 985 F.2d 298 (6th Cir. 1993); *United States v. Mitchell*, 788 F.2d 1232 (7th Cir. 1986); *State v. Jordan*, 804 N.E.2d 1, 7-9 (Ohio 2004). For example, in *Wood v. Quarterman*, 491 F.3d 196 (5th Cir. 2007), the defendant was convicted of murder. Explaining that he did not wish to present evidence or cross examine witnesses at his sentencing, Wood asked the court to dismiss his attorneys for sentencing. *Id.* at 198. The court denied his request. *Id.* Throughout sentencing, the defendant "clearly and repeatedly instructed his attorney to sit idly," and the attorney obliged. *Id.* at 204. On appeal, Wood claimed that he was denied his right to self-representation and that his attorney committed ineffective assistance of counsel. *Id.* at 197. Although Wood's efforts to have it both ways

failed sometimes defendants like Wood succeed in obtaining reversal. See, e.g., *Schafer v. Bowersox*, 329 F.3d 637, 650 (8th Cir. 2003); *People v. Lego*, 660 N.E.2d 971, 979 (Ill. 1995). Such appeals reveal the vulnerability of the trial judge's competency determination, which defendants may appeal even when they receive exactly what they requested.

All too often, trial judges find themselves in a Catch- 22: no matter whether they grant or deny the defendant's request for self-representation, an appeal is inevitable. *United States v. Treff*, 924 F.2d 975, 979 (10th Cir. 1991) ("It follows that if a defendant in a criminal proceeding makes an *equivocal* demand on the question of self-representation, he has a potential ground for appellate reversal no matter how the district court rules."). Defendants' requests to self-represent present a "peculiar problem" for trial court judges, who must "'traverse . . . a thin line' between improperly allowing a defendant to proceed pro se, thereby violating his right to counsel, and improperly allowing the defendant to proceed with counsel, thereby violating his right to self-representation." *Fields v. Murray*, 49 F.3d 1024, 1028-29 (4th Cir. 1995) (citing *Cross v. United States*, 893 F.2d 1287, 1290 (11th Cir. 1990)). Recognizing this problem, one trial judge told a defendant that his motion to self-represent was denied because the judge was unwilling "to put the Court in the position whereby you defend yourself and then it's reversed if there is a conviction, just because there was no attorney present." *Spencer v. Ault*, 941 F. Supp. 832, 837 (N.D. Iowa 1996). Under a unitary competency standard for standing trial and self-representing, a defendant is able to pin the trial judge between a rock and a hard place—appealing under his right to

counsel if his request for self-representation is granted, and appealing under his right to self-representation if his request is denied. *Fields*, 49 F.3d at 1029 (citing *Cross*, 893 F.2d at 1290). "A skillful defendant could manipulate this dilemma to create reversible error." *Id.* (citing *Cross*, 893 F.2d at 1290). Such appeals undermine the finality of competency determinations and the resulting criminal judgments.

2. If States are permitted to apply a heightened standard for competency of self-representation determinations, their decisions will be less vulnerable to appeal.

Reversing the Indiana Supreme Court's judgment and permitting States to implement a heightened standard will enhance the stability of trial courts' competency determinations because a defendant will no longer be able to appeal so easily a favorable lower court decision. The earlier-described Catch-22 is possible only when a defendant can file a potentially meritorious appeal regardless of the trial court's ruling on his motion to proceed pro se.

Allowing the States to apply an enhanced competency standard negates this dilemma by diminishing a defendant's ability to appeal a favorable competency determination. If courts apply a unitary competency standard, the competency to self-represent is equivalent to the constitutionally minimum mental functioning necessary to stand trial. Hence, a defendant asserts a constitutional challenge when, after proceeding pro se and being convicted, he challenges the court's ruling allowing

him to proceed pro se by arguing that he was not competent to do so.

Under a divided competency regime, by contrast, space exists between the competency necessary to represent oneself and the minimum competency necessary to stand trial. When the trial court applies a heightened competency standard, a challenge to a favorable competency ruling is not automatically a constitutional claim, so defendants who represent themselves unsuccessfully cannot automatically appeal the court's competency determination. The only way such a defendant could successfully appeal would be to establish that he was not just incompetent to represent himself, but also incompetent to stand trial. Such a showing, of course, would be difficult to make in the wake of a trial court decision that he satisfied a higher competency standard. In this sense, an enhanced competency standard for self-representation insulates from attack favorable rulings on defense motions to proceed pro se and thereby advances the State's important interest in finality.

CONCLUSION

For the above reasons, the Court should reverse the Indiana Supreme Court's judgment and hold that States are free to adopt competency standards for pro se defendants that are higher than the *Dusky* standard for competency to stand trial with counsel.

Respectfully submitted,

MARC DANN
Attorney General of Ohio

WILLIAM P. MARSHALL*
Solicitor General of Ohio
**Counsel of Record*
ROBERT J. KRUMMEN
MICHAEL DOMINIC MEUTI
KIMBERLY A. OLSON
Deputy Solicitors
KELLY A. BORCHERS
Assistant Solicitor
30 East Broad Street
17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax

Counsel for Amicus Curiae
State of Ohio

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